The duly filed and published tariffs of respondent Indiana Harbor Belt Railroad Company and all other carriers in the States of Illinois and Indiana, and in other states of the United States, as in effect now and for more than twenty years past, name rates for transportation covering the complete services described in this paragraph, with respect to carload freight moving to and from any and all railroad terminals and industries, plants, warehouses or other business establishments; and the same rates have been applicable and have been applied by all of said carriers, whether carload shipments of freight originated on so-called public team tracks or on so-called private side tracks serving the plants, industries and other business establishments and whether such shipments were delivered on so-called public team tracks or on so-called private side tracks as aforesaid. [fol. 11] Respondent Indiana Harbor Belt Railroad Company operates a so-called belt railway or terminal railroad in the so-called Chicago switching district which has direct connections with practically all so-called trunk lines of railroad entering said Chicago district. Under the provisions of the tariffs of all said trunk line railroads entering Chicago, deliveries are made to all industries in the Chicago district, served by all railroads in said district, including all industries on said Indiana Harbor Belt Railroad, at a common rate. Likewise, outbound shipments from all industries in said Chicago district situated on all railroads in said district move at a common rate of freight, regardless of the particular point at which loaded.

VI

The record in the aforesaid investigation by the Commission in Ex Parte 104, Part II, contains abundant testimony by numerous witnesses supporting the averments in paragraph V hereof; and there is no evidence in said record to the contrary.

There is no evidence in said record that the carriers in serving any industry, plant, warehouse or other business establishment have sought to limit their duty or terminate their obligation under the line-haul rates by placement of cars at any point short of or intermediate to the place mutually agreed upon with the shipper or consignee as reasonable and convenient for the loading or unloading of carload freight.

[fol. 12] VII

Petitioner Inland Steel Company for several years past has rendered the transportation service and furnished the instrumentalities employed in moving carloads of freight between the rails of respondent Indiana Harbor Belt Railroad Company adjacent to petitioner's plant, and convenient points of loading or unloading in said plant; an application for compensation in the form of allowance for such service was submitted by petitioner to said respondent in July, 1928; said application was considered by the respondent Indiana Harbor Belt Railroad Company. Said respondent conducted an investigation of the cost of performing the spotting service as a basis for allowance; the cost thereof was determined by such study to be $1.98 per car, according to the formula employed by the carriers for such cost ascertainment and which formula omitted various factors of actual cost; and thereafter said respondent duly established an allowance of $1.85 per car, effective October 25, 1930.

The aforesaid allowance of $1.85 per car is less than the cost to petitioner of performing the placement services which are included in the establishes rates and which the allowance is designed to cover; and said allowance is less than it would cost the Indiana Harbor Belt Railroad Company to perform the service with its owned engines and regularly employed crews. These facts are established by uncontradicted evidence before the Commission in the record of said Ex Parte 104, Part II.

[fol. 13] VIII

At all times since October 25, 1930, the duly filed and published tariff of respondent the Indiana Harbor Belt Railroad Company has been in force, providing payment of allowance by respondent to petitioner for the latter's transportation service of moving and placing cars at loading and unloading points in its plant; and said tariff currently effective provides as follows:

Indiana Harbor Belt Railroad Company
Local Freight Tariff Covering Allowances to Inland Steel Company at Indiana Harbor, Indiana

*On all carload shipments (including trap cars containing 6,000 pounds or more of less carload freight) des-

* Reduction.

tined to or coming from the plant of the Inland Steel Company at Indiana Harbor, Ind., the terminal switching service is performed by the Inland Steel Company for account of the Indiana Harbor Belt Railroad Company. Such terminal switching service, for which this allowance is made, consists of the handling of the cars between the point of interchange of such cars with this company and the point at which such cars are unloaded or the point at which such cars are loaded in said plant.

For such terminal service performed for the Indiana Harbor Belt Railroad Company by the Inland Steel Company at Indiana Harbor, Ind., the Inland Steel Company will be allowed $1.85 per loaded car which will include the handling of the empty cars in the reverse direction.

This allowance is not in excess of the average actual [fol. 14] cost of the service as disclosed in a joint study of the operation of the plant facility made during the year 1927, and filed with the Interstate Commerce Commission.

IX

Respondent carrier has filed with the Interstate Commerce Commission a tariff to become effective September 3, 1935, providing for the withdrawal and cancellation of the aforesaid allowance to petitioner, as follows:

Indiana Harbor Belt Railroad Company

Supplement No. 1 to Local Freight Tariff G. F. D. No. 505-A
Cancels Local Freight Tariff G. F. D. No. 505-A Covering Allowances to Inland Steel Company at Indiana Harbor, Indiana.

Cancellation Notice

The above numbered tariff is hereby withdrawn and cancelled.

Issued August 1, 1935. Effective September 3, 1935.

Issued in compliance with order of Interstate Commerce Commission Ex Parte 104, Part II, Terminal Services, Nineteenth Supplemental Report dated July 11, 1935.

Petitioner is informed by respondent that it would not have filed the aforesaid tariff cancelling said allow- [fol. 15] ance to petitioner were it not for the fear of incurring penalties for failure to comply with the aforesaid

order of the Interstate Commerce Commission entered July 11, 1935.

X.

The aforesaid order of the Commission instituting its investigation Ex Parte 104 on its own motion and without formal pleading, as set forth in paragraph IV of this petition, was not based upon any complaint or application of any sort submitted to the Commission by any person, either carrier or shipper, that the practice above described as in force at petitioner's plant was unreasonable, discriminatory, or in any way violation of law, so far as known to petitioner. In the branch of said proceeding designated Part II, Terminal Services of Class I carriers, in which the testimony relative to petitioner's plant was taken at Chicago, Illinois, during the hearing, October 28 to November 5, 1932, no party, either carrier or shipper, presented any testimony purporting to show that said practice at petitioner's plant was unreasonable or discriminatory or otherwise in violation of law in any respect. Petitioner's representative appeared at said hearing in response to a request addressed to petitioner by the Secretary of the Commission, and said representative in response to the call of the presiding Director of Service of the Commission became a witness and presented testimony describing said practice. No other testimony as to said practice at petitioner's plant was presented except on behalf of respondent Indiana Harbor Belt Railroad Company, which respondent was a party to said proceeding of investigation solely by virtue of the Commission's order instituting such investigation and making all so-called Class I railroads [fol. 16] of the United States respondents therein, and said respondent Indiana Harbor Belt Railroad Company presented its testimony in support of the existing practice and tariffs.

XI.

The said report and order of July 11, 1935, as above set forth, is unlawful and void in the following respects:

1. The Commission was without authority to make the said order.

2. The Commission failed to make requisite findings sufficient to support its order.

3. The Commission's said report and order are arbitrary and in violation of previous rulings as to the duty of a common carrier by railroad to perform the service of placement of empty cars for load at, and removal of loaded cars from, point of loading, and placement of loaded car at, and removal of empty car from, point of unloading, within the plant of the petitioner.

4. There was no evidence upon which the Commission could find—

(a) That the respondents have complied with their obligation to petitioner under their rates for interstate transportation to deliver and receive carload freight when they place the cars containing said freight on the so-called interchange tracks described of record or remove the cars therefrom;

(b) That the service of moving cars beyond the so-called interchange tracks is a plant service;

(c) That by the payment of an allowance to petitioner for service performed by it in moving cars containing interstate shipments beyond the interchange tracks, respondents provide the means by which petitioner enjoys [fol. 17] a preferential service not accorded to shippers generally;

(d) That to refund or remit a portion of the rates and charges collected or received as compensation for the transportation of property, as set forth in said supplemental report, is in violation of paragraph (7) of Section 6 of the Act.

5. The evidence on which the order is based shows conclusively that the terminal allowance paid by the respondent railroad company to petitioner is for a transportation service embraced within the service for which the respondent railroad company publishes, charges and receives the rates named in its tariffs of freight charges filed with the Interstate Commerce Commission; that the said terminal allowance is no more than just and reasonable and, being published in the tariffs of the respondent railroad company, is just as binding upon the respondent railroad company as is any rate named in its tariffs to be collected for the transportation of property by it in interstate commerce; and when the extent of the service of the carrier

in the receipt and delivery of freight to be performed for the line haul rate is made clear by the published tariffs of the carrier and by the course of business followed by the carrier as recited above, and when it is stated in a tariff of the carrier that an allowance is made to the shipper or receiver of the freight for the performance of a part of said service, and the amount of such allowance is stated, such tariff being duly published and established and in force, such service and such allowance can not be in violation of Section 6 of the Interstate Commerce Act.

6. In view of paragraph (13) of Section 15 of the Interstate Commerce Act, the Commission has no power to prohibit defendant railroad company from employing [fol. 18] plaintiff to furnish services or from using plaintiff's facilities in the transportation of plaintiff's property. The Commission has power only to determine whether the amount of the allowance paid by defendant railroad company to plaintiff for service and facilities is more than is just and reasonable for such services rendered and facilities furnished, and to fix a limit which shall not be exceeded in the payment therefor.

The Commission in its said order of July 11, 1935, forbidding any and all allowance to plaintiff for services rendered and facilities furnished, exceeded its authority and acted arbitrarily; therefore, the said order is void and of no effect.

7. The evidence wholly fails to show any violation of law by the petitioner or by the respondent railroad company in connection with the terminal allowance at petitioner's plant as above described.

8. The report and order were not entered after full hearing and due investigation; and petitioner was not accorded due notice and full hearing as required by the statute.

XII.

Petitioner has handled and will continue to handle for respondent railroad company loaded cars on which the terminal allowance payable as compensation for said handling is paid pursuant to the tariff of respondent carrier providing for such payment, and said service cannot be paid for or compensated except as authorized and provided by duly filed and published tariff. Unless

the order of the Commission be set aside and the respondent be required to withdraw its canceling tariff, plaintiff will be compelled to perform said service of transportation for the benefit of respondent railroad com-
[fol. 19] pany but at its own cost and expense, without the possibility of payment being made by the respondent railroad company in the absence of tariff authority, thereby subjecting petitioner to irreparable loss and injury.

The petitioner so handles for respondent railroad company more than 4,000 cars per month, on the average, on which the aforesaid switching allowance payable to and received by petitioner in accordance with aforesaid tariff from respondent Indiana Harbor Belt Railroad Company, amounts to not less than Seven Thousand Five Hundred Dollars ($7,500), monthly, on the average. The expense which petitioner will be compelled to assume and bear, if respondent's aforesaid tariff providing said allowance is cancelled, will be in excess of $1.85 per car, amounting in the aggregate excess to more than $7,500 monthly, on the average, thereby subjecting petitioner to irreparable loss and injury, as aforesaid.

In consideration whereof and inasmuch as your petitioner has no adequate remedy at law, and may have relief only in a Court of Equity, petitioner prays that this petition be received and filed; that writs of subpoena be issued by the Clerk of the Court, as provided by law, commanding the United States of America and the Indiana Harbor Belt Railroad Company to appear and defend this action; that notice hereof be given to the Attorney General of the United States and to the Interstate Commerce Commission; that upon the filing of this bill the Judge of this Court call to his assistance two other Judges, one of whom shall be a Circuit Judge, and that upon five days' notice of the time and place of hearing having been given to the Attorney General of the United States and to the Interstate Commerce Commission and
[fol. 20] to said respondent carrier, the petitioner be granted an interlocutory injunction restraining the United States of America and the Interstate Commerce Commission from enforcing the terms of said order which requires respondent carrier to cease and desist on or before September 3, 1935, and thereafter to abstain from the practice in said order described; and that upon final hearing

of this case, a decree be entered adjudging the said order to be in all respects null and void and permanently enjoining, annulling and setting aside the enforcement, operation and execution of said order.

And petitioner further prays that a preliminary or interlocutory order or injunction be entered, requiring the railroad respondent to cancel the tariffs herein referred to, filed in alleged conformity with the said order of the Commission, and suspending the cancellation of the terminal allowance now being paid petitioner, until final determination of this cause, and that upon the final hearing herein, a decree be entered perpetually enjoining, suspending, annulling and setting aside the said tariffs and requiring the said carrier respondent to file new tariffs restoring the terminal allowances in effect on July 10, 1935, on interstate traffic handled by the petitioner at its said plant at Indiana Harbor, Indiana, unless and until changed by agreement of the parties or by a lawful decision of the Interstate Commerce Commission.

Petitioner further prays, inasmuch as the purpose of the foregoing prayers for relief is to set aside the order of the Commission of July 11, 1935, and to restore the status quo of July 10, 1935, for such other and further orders or decrees as may be necessary to set aside said order of the Interstate Commerce Commission and to require the railroad respondents to vacate, annul and set aside any and all action which may have been taken under [fol. 21] and by reason of said order of the Commission, and to take such action as may be necessary to restore the parties and properties affected by said order to the status of July 10, 1935, and for such further and other relief in the premises as the nature of the case shall require, and to this Court shall seem meet.

Luther M. Walter, Nuel D. Belnap, John S. Burchmore, Solicitors for Petitioner. Walter, Burchmore & Belnap, 1522 First National Bank Bldg., Chicago, Ill.

Duly sworn to by W. J. Hammond. Jurat omitted in printing.

[fol. 22] APPENDIX "A" TO PETITION

INTERSTATE COMMERCE COMMISSION

Ex Parte No. 104

Practices of Carriers Affecting Operating Revenues or Expenses

Part II

Terminal Services

Submitted October 17, 1934. Decided May 14, 1935

Upon investigation into practices of carriers affecting operating revenues or expenses with relation to terminal service of Class I carriers by railroad, found that:

1. When a carrier is prevented from performing an uninterrupted service to the points of loading or unloading within the confines of an industrial plant because of some action or disability of the industry or its plant, the carrier's duty with respect to the delivery or receipt of cars does not extend beyond the point of interruption or interference, and any allowance to the industry for performing the service beyond such points or the performance of service by the [fol. 23] carrier beyond such points without proper charge is unlawful in violation of section 6 of the act.

2. At many industries delivery and receipt of freight is effected by carriers on interchange tracks because of interference or interruption to the work of both the industry and the carrier which would be encountered beyond such tracks. Under such circumstances, delivery or receipt on such tracks constitutes delivery or receipt under the line-haul rates.

3. When the spotting service at an industry requires a service in excess of that required in making simple placement or the equivalent of team track spotting, such service is in excess of that required of a common carrier under its line-haul rate, and any allowance to the industry for performing such service or the performance thereof by the carrier without charge over and above the line-haul rate is unlawful in violation of section 6 of the act.

4. The payment by respondents of allowances to individual industries for the performance of spotting service

at the latter's convenience, or the assignment by respondents of locomotives to perform similar service without charge, dissipates respondents' funds and revenues, to be not in conformity with efficient and economical management as contemplated by the Interstate Commerce Act, and not in the public interest.

Ex Parte No. 104, Part II—Sheet 2

Sidney S. Alderman, Harry I. Allen, C. L. Andrus, B. S. Atkinson, Thomas Balmer, J. R. Barse, B. F. Batts, C. S. Beattie, Charles S. Belsterling, J. R. Bell, E. E. Bennett, L. J. Birch, Charles H. Blatchford, Elmer F. Blu, M. L. Blum, H. D. Boynton, J. R. Branley, G. P. Brock, William S. Bronson, C. W. Brosius, Clyde Brown, N. S. Brown, H. L. Burford, C. S. Burg, E. H. Burgess, T. H. Burgess, E. W. Camp, [fol. 24] William D. P. Carey, E. G. Clark, A. F. Cleveland, F. A. Cleveland, A. J. Clynch, A. L. Coey, W. A. Cole, William W. Collin, Jr., William C. Combs, John F. Connors, John J. Danhof, L. B. da Ponte, A. G. Davis, J. N. Davis, Tom Martin Davis, W. E. Davis, W. G. Degelow, Ernest C. Dempsey, Robert F. Denison, T. F. Dooley, E. G. Dorety, George Cochran Doub, F. M. Dudley, Gerald E. Duffy, Fayette B. Dow, G. G. Earley, O. G. Edwards, A. H. Elder, Charles E. Elmquist, W. F. Everding, W. Hal Farr, George H. Fernald, Allister Fraser, J. A. Gallaher, F. M. Garland, P. F. Gault, T. D. Gresham, C. L. Groom, W. L. Grubbs, A. J. Grummett, August G. Gutheim, R. J. Hagman, E. J. Halberg, C. A. Halpin, M. Carter Hall, A. S. Halsted, Charles A. Hart, Henry J. Hart, Thomas P. Healy, Carl R. Henry, C. C. Hine, George W. Holmes, E. E. Horton, C. A. Hunt, George W. Imgrund, Bronson Jewell, Harry R. Jones, L. C. Jorgensen, F. A. Key, A. G. Kingsley, A. H. Kiskaddon, John B. Keeler, Jarvis Langdon, Jr., W. J. Larrabee, H. H. Larimore, A. H. Lossow, J. A. Lynch, James E. Lyons, Thomas H. Maguire, Andrew P. Martin, Eldon M. Martin, James Martinbee, G. B. Mathews, Frederic D. McCarthy, H. H. McElroy, Walter McFarland, W. N. McGehee, L. L. McIntyre, C. B. McManus, Carleton W. Meyer, W. R. Middleton, Clark H. Miley, Clarence A. Miller, J. H. Miller, E. B. Moffatt, Frank H. Moore, A. R. Morton, P. K. Motheral, G. H. Muckley, John W. Murphy, H. T. Newcomb, George S. Nichols, E. R. Oliver, Guernsey Orcutt, George P. Orlady, Conrad Olson, R. S. Outlaw, James V.

Oxtoby, R. G. Parks, W. F. Peter, Marion B. Pierce, Roy Pope, Horace H. Powers, Thomas L. Preston, C. M. Price, H. M. Quigley, J. T. Quisenberry, W. A. Rambach, L. C. Reddish, K. L. Richmond, W. A. Robbins, M. G. Roberts, Fletcher Rockwood, G. B. Ross, William R. Seaton, John C. Shields, H. D. Sheean, J. R. Skillman, F. V. Slocum, C. A. Smith, C. [fol. 25] H. Smith, Dana T. Smith, Elmer A. Smith, J. M. Souby, H. V. Spike, B. H. Stanage, C. P. Stewart, W. J. Stevenson, James Stillwell, H. A. St. John, Edward F. Stock, William F. Strang, L. H. Strasser, C. C. Straub, O. E. Swan, G. M. Swanstrom, A. Syverson, J. H. Tallichet, M. W. Thomas, Robert Thompson, D. L. Tilley, F. H. Towner, William Jay Turner, John L. Tye, Jr., Arthur Van Meter, H. L. Walker, Fred L. Wallace, Charles R. Webber, R. E. Wedekind, M. J. Welsh, R. F. White, H. R. Wilkinson, Eugene S. Willams, Felix M. Williams, George Williams, Maurice Williams, W. K. Williams, L. F. Wilson, C. T. Wolfe, J. W. Womble, Frederick H. Wood, D. S. Wright, James F. Wright, J. C. Wroton, and D. Lynch Younger for respondents and other carriers.

G. T. Avery, Ernie Adamson, F. A. Allen, Harry I. Allen, C. O. Applehagen, Clinton S. Abbott, Charles J. Austin, J. R. Allen, R. C. Allen, A. G. Anderson, Baker, Botts, Andrews & Wharton, Thomas Balmer, H. H. Bascom, John W. Bingham, H. J. Bennett, T. E. Banning, W. J. Bailey, Wm. C. Boyd, F. C. Broadway, J. C. Beck, J. W. Brown, Clifford H. Browder, F. G. Buck, H. O. Berger, M. P. Bauman, George P. Boyle, John S. Burchmore, Nuel D. Belnap, Frederick E. Brown, T. H. Burgess, L. H. Brenner, J. E. Bryan, Fred B. Blair, Frank F. Bergstrom, D. L. Bennett, T. C. Burwell, George E. Clinton, W. Clive Crosby, Joseph W. Connolly, W. P. Coughlin, John R. Cochran, J. A. Coakley, J. E. Considine, R. B. Coapstick, J. P. Cassidy, W. G. Clayton, A. J. Clynch, Johnston B. Campbell, Willis Crane,

Carl R. Cunningham, G. B. Cromwell, Calvin A. Campbell, Jr., Call & Murphy, William W. Collin, Jr., H. W. Chapman, F. H. Compton, H. J. Carey, L. W. Cobb, W. H. Chandler, Benjamin Conliff, William H. Connell, F. M. Crawford, [fol. 26] A. W. Clapp, Cravath, de Gersdorff, Swaine & Wood, J. C. Davie, J. B. Dempsey, F. A. Dobber, Ralph H. Drake, Fayette B. Dow, W. H. Day, G. J. Durpey, Edward

S. DePass, G. L. Dalton, Walter David, J. R. Davis, Floyd C. Davis, James F. Dougherty, R. H. Dunn, J. N. Deller, W. Burl Dalton, Wm. A. Dougherty, J. G. Dickson, E. W. Demarest, John C. Dunn, Arthur W. Dowds, Charles Donley, W. F. Everding, A. C. Ellis, Jr., H. S. Elkins, W. W. Eismann, R. Z. Eaton, R. A. Ellison, Charles Ervin, William F. Ehmann, G. R. Farmer, E. T. Foxenbergh, S. L. Felton, Charles J. Fagg, W. B. Faulkner, C. L. Franklin, Harry D. Fenske, W. S. Foster, R. W. J. Flynn, G. E. Flanders, J. M. Fleming, W. H. Francis, C. C. Furgason, T. D. Geoghegan, Ludwick Graves, C. L. Groom, E. D. Grinnell, R. H. Goebel, Paul J. Gates, Robert B. Goodman, F. M. Garland, E. S. Gubernator, Byron M. Gray, Bernard L. Glover, W. D. Goble, A. G. Grim, Charles Gallagher, A. C. Graham, R. J. Hagman, C. A. Hart, G. B. Hetherington, C. Hershey, H. F. Hovey, Fred W. Haas, G. R. Hanks, Bryce L. Hamilton, W. H. Hooper, J. W. Holloway, C. E. Hochstedler, A. E. Hickerson, F. T. Horan, S. T. Henson, W. J. Hammond, W. T. Hancock, J. D. Hurst, James J. Hailey, J. P. Haynes, Wayne P. Hendricks, J. O. Houze, Henry Hauseman, E. M. Hayden, I. M. Herndon, C. R. Hillyer, F. S. Hollands, W. E. Heidinger, George F. Hichborn, J. K. Hiltner, A. C. Hultgren, E. M. Hodges, F. G. Ibach, H. Ignatius, E. A. Jack, J. W. Jamison, W. H. Johns, J. Jones, R. L. Jones, J. C. Husteson, George Jay, R. L. Korf, F. S. Keiser, Elmer J. Klebba, Kemper K. Knapp, H. H. Knight, Lee Kuempel, F. W. Kerr, John B. Keeler, Russell W. Krantz, A. R. Kennedy, Edward F. Lodwidge, T. A. L. Loretz, H. J. Lang, A. G. Linnemann, W. R. Lynch, S. C. Loughbridge, W. H. Lougheed, A. P. Lane, W. A. Latham, Arthur S. Lytton, Stanley M. Low, H. H. Lucas, Wilbur LaRoe, Jr., [fol. 27] C. A. Lahey, W. B. Lewis, J. S. Marvin, J. E. Monroe, H. D. McKnight, Kenneth A. Moore, Herman Mueller, A. King McCord, George W. Morgan, Lambert McAllister, R. H. McElroy, Parker McCollester, H. G. McNamara, John T. Money, T. M. Milling, F. R. McFarland, H. O. Mackinch, Robert Elmer Minton, C. C. Milliken, T. W. Mackey, T. J. McLaughlin, W. J. Mathey, Hoyt A. Moore, H. D. Musick, M. J. McMahon, E. W. McKay, Andrew P. Martin, James H. Myler, J. A. Maher, A. A. Mattson, Herbert H. Moffitt, Donald D. Moore, James McEvory, John W. Murphy, W. F. Morris, Jr., Earle J. Machold,

D. T. Meyers, C. R. MacCarey, Charles W. Mays, H. E. McGiverson, E. L. Maynard, William A. Moore, J. P. Magill, W. M. Maddox, Harry J. Newton, W. J. Nokely, F. H. Nesmith, Cecil A. New, Norman, Quirk & Graham, C. Ohlsen, James V. Oxtoby, E. W. Owens, J. B. Orr, R. W. Ostrander, R. S. Outlaw, J. W. Porter, Richard Parkhurst, Stephen A. Power, F. A. Perry, F. E. Paulson, Philip H. Porter, W. H. Pease, W. H. Perry, R. W. Poteet, Robert E. Quirk, R. L. Reese, P. A. Ripley, W. J. Rowley, A. J. Radosta, Jr., J. L. Roberts, M. G. Roberts, Fred M. Renshal, John Rowe, G. B. Ross, Fletcher Rockwood, W. E. Rosenbaum, Frank E. Robson, R. M. Robinson, H. W. Roe, A. A. Raphael, M. C. Richards, C. R. Scharff, A. J. Sevin, Charles Schakell, A. H. Schwietert, G. M. Sherman, C. M. Shepherd, E. D. Sheffe, James J. Shaw, H. M. Slater, Samuel G. Spear, W. R. Scott, Marshall G. Sampsell, Walter F. Schulter, C. R. Seal, E. W. Sieboldt, H. R. Synder, Leonard Simms, Charles W. Stiver, F. L. Sullivan, J. H. Shaw, C. A. Sullivan, C. H. Sullivan, H. C. Schimmelman, R. O. Stevenson, G. H. Staat, W. D. Sankey, Jr., F. L. Stokes, Ned A. Stewart, Walter A. Smith, Hal H. Smith, Frank M. Swacker, C. T. Stripp, Elmer R. Terry, Frank T. Towner,

[fol. 28] Ex Parte No. 104, Part II—Sheet 4

Herbert Thompson, G. F. Thomas, Lee W. Troutfetter, C. A. Talley, Clare B. Tefft, W. E. Tulley, J. H. Uptegrove, Arthur B. Van Buskirk, A. M. Van Donser, R. R. Veldman, E. H. White, Arthur L. Winn, Jr., C. E. Widell, Elmer Westlake, E. S. Wortham, J. K. White, A. C. Welsh, Frederick H. Wood, George E. Winters, William N. Webb, Edgar N. Wrightington, L. F. Weber, H. W. Wise, T. H. Wilson, Sheldon E. Wardwell, Leo F. Wormser, R. S. Waterbury, Warren H. Wagner, Wallace H. Walker, S. H. Williams, F. M. Wintermute, C. H. Winslow, E. L. Wilkerson, J. W. Watson, Chester L. Whittemore, Luther M. Walter, Charles H. Woods, and C. F. Young for various industries and associations.

[fol. 29] Report of the Commission

By the COMMISSION:

This is an investigation upon our own motion into practices of carriers affecting operating revenues or expenses, which for convenience was divided into different parts. Part II, being the instant part, relates to terminal service

of Class I[1] carriers by railroad subject to the Interstate Commerce Act. It does not deal with allowances or divisions to industrial common carriers. Hearings were held at convenient points throughout the country. The record comprises evidence presented by carriers and shippers, and data called for by questionnaires. A proposed report was prepared by the director of our Bureau of Service, to which exceptions were filed by numerous parties, and the case was argued orally. The proposed report dealt with the practices at many individual industries. We will herein deal only with the legal questions and general situations presented. Separate reports will be issued covering the industries either individually or by groups.

Our inquiry first extended to various phases of terminal services including those covered herein and the practices of respondent carriers in connection therewith. No industries were heard. Thereafter further hearings were had at which industries were invited to be present and advised of the information to be sought at such further hearings. The principal questions to be determined, as indicated in the later notices, are as follows:

1. Whether such terminal services, in whole or in part—performed in placing cars at designated locations in positions accessible for loading and unloading—are services which the connecting common carriers, by operation of law, [fol. 30] are duty-bound to perform. This question relates to three distinct methods of rendering such services, including:

Group A, where the industries perform these services and receive compensation therefor from respondent carriers.

Group B, where the industries perform the services and themselves bear the expense without compensation from respondent carriers, and

Group C, where respondent carriers perform the services at the special convenience of the industries.

2. Whether, in circumstances where such services are performed by the industries, any allowances made to the

[1] Carriers having annual operating revenues above $1,000,000.

industries by connecting common carriers as compensation for such services, are lawful; also why, in similar circumstances, no allowances are made to other industries for performing such services.

The service rendered in placing cars on and removing them from team tracks and private sidings is well known. It consists of the placing of cars at or their removal from a point on such tracks reasonably convenient to both the carrier and the shipper. A description of the service involved on tracks of individual industrial plants will be dealt with in subsequent reports, but in general it may be stated as follows: The industries heard on this record have systems of tracks within their plants which vary in extent from a few tracks aggregating only a few hundred feet in length, to extensive systems many miles in length. These industries are served in one of two ways, i. e., inbound and outbound cars are delivered or received by the carriers on interchange [2] tracks which either compose an extensive yard [fol. 31] or designated tracks from and to which interchange tracks the spotting [3] service is performed by locomotives belonging to the industry served, for which service in many instances the industry receives an allowance from the carrier while in other instances such service is performed by the industry at its own expense; or by the other method the spotting service is performed by the carrier. In the majority of such instances the spotting is performed by the carrier at its convenience and without interruption or interference by the industry. In other instances cars are first placed by the carrier on interchange tracks from which they are subsequently moved by a carrier engine or engines assigned to the plant and operating entirely under the direction of the industry and spotted when and as needed by the industry without charge in addition to the

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[2] By "interchange" yards or tracks, as used herein, is meant the yards or tracks where cars are delivered to or received from an industry by the connecting carrier. In most instances these yards or tracks are on property of the industry.

[3] "Spotting" or spotting service, as used herein, is the service beyond a reasonably convenient point of interchange between road haul or connecting carrier and loading or unloading locations on industrial plant tracks.

line-haul rate or switching charge otherwise applicable. At the latter group of industries the services are substantially the same as at the industries where the spotting service is performed by plant power. This report will principally deal with the class of industries to which an allowance is paid by the carrier as compensation for rendering service which it is urged is within the obligation of the carrier under the line-haul rate, and those to which the

carriers assign power to perform the spotting service. Many industries own and operate their own power in conducting the industrial operations and in the movement of [fol. 32] cars in intraplant [4] service, for which latter service a charge would be collected if performed by the carriers. The industries are thus able to perform all switching service within their plants and coordinate the different services and avoid interference with their industrial operations to a greater degree than would be possible if the connecting carriers performed a part of the switching. Many plants are served by two or more carriers, and in such cases confusion between the carriers and interference with the industrial operations would result if locomotives of the carriers and the industry were switching within the plant at the same time. Very often the industrial operations do not require the entire time of a locomotive, which, however, must be kept available. If the idle time can be employed in performing a service which the carriers can be induced to pay for, a clear gain accrues to the industry. For these reasons the industries prefer to use their own locomotives and, in general, endeavor to secure an allowance for performing the spotting service.

Numerous other industries heard on this record use locomotives for the identical purposes and in the same manner, but receive no allowance therefor, although many of them have made attempts to secure payment for such services. Regardless of the carrier's duty or obligation, in all cases the industrial operations must have primary consideration, and for this reason many industries which have not sought,

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[4] Such movements as the plant requires in carrying on its operations and are not related to the delivery or receipt of cars.

or have failed to receive, allowances prefer to operate their locomotives to avoid interference with plant operations, and no greater service is performed by the connecting carriers than delivering and receiving cars at convenient interchange points.

[fol. 33] The published tariffs generally establish switching limits at the various destination points. Delivery within those limits is paid for when rates are collected to those destinations. In some cases the switching limits are definitely defined by boundaries, and at others the industries included within the switching district are named. There is no dispute that delivery at the various industries is covered by the published rate. The difficult thing is to ascertain when delivery at the plant is made. In the nature of things no inflexible formula can furnish a solution for that problem. The limitation of place within which delivery is due will vary with varying conditions. All that we can safely say is that there must be such a delivery as is customary and reasonable. Delivery by railroad is usually effected either at freight houses or other terminals, and deliveries are still made at such places where the factories and warehouses of shippers and consignees do not connect with the tracks. Private sidings have become common and freight is carried over them between the railroad and the plant. Such carriage is commonly regarded as a part of the work of transportation. In most cases the distances are short

and the carrier's burden remains substantially the same whether the cars are left upon the siding close to the main tracks or hauled along the siding until they reach the plant. In such circumstances it may be said with reason that delivery at the plant means delivery at the platform for loading and unloading. The respondents have not withheld service incidental to carriage between the railroad and the plant. Cars have been hauled from the main line to agreed interchange tracks either within the limits of the plant or on tracks in close proximity thereto. These interchange tracks correspond to the spurs or sidings on which the prac-

[fol. 34] tice of spotting had its origin. What many of the industries here insist upon is that the respondents must haul them farther over an intricate system of interlacing tracks and distribute them among the mills and warehouses

not at the convenience of the respondents but in order to meet the industrial needs of the plant. We come then to the test, which, vague as it is, is the only safe one, that is, whether in the light of all the circumstances such a form of delivery is customary or reasonable. That it is not customary is established, we think, by uncontroverted evidence. Spotting cars upon short and direct sidings is a service that has little kinship to intricate maneuvers designed not to reach the industry but to permit the convenient distribution of wares among the subdivisions of the industry. The difference may be one of degree but here as is so often in the law such differences are vital. In many cases shown upon the record the complicated shifts and transfers are made by shippers or consignees within their own plants at their own cost and without an allowance from the carrier.

The tariffs publishing the line haul and switching charges constituting the carrier's holding out to all alike of service under such rates and charges do not in terms or by any reasonable construction provide for "plant switching" or "spotting of cars at unloading point" to be performed at plant's convenience.

During the period of years in which we have considered allowances, many cases dealing with spotting services, allowances to industries, and so-called plant facility railroads have been considered. Counsel of record filed a brief listing 164 cases which we have decided, and several have been decided since that brief was filed. Many of these cases dealt with allowance or divisions of rates to industrial common carriers, which are not discussed herein. A number [fol. 35] of these, such as the Industrial Railways Case, 29 I. C. C. 212, The Tap Line Case, 23 I. C. C. 277, and others, were considered on voluminous records. Rules have been promulgated by various carrier associations, for the guidance of the carriers in the granting of allowances, but being without binding force upon any individual carrier, they have been largely disregarded.

About 1920 a special committee of carriers operating in official territory made a study of the practices in that territory with respect to the spotting service. This special committee reported that the practices were irregular and inconsistent and demanded a remedy. The committee believed that the formula by which the allowances were computed was incorrect, and resulted in unjustified expense to the

carriers. It recognized that much of the service for which allowances were paid was service which was in excess of

the carrier's obligations under their line-haul rates and proposed that a tariff be issued for account of the carriers in that territory. The proposed tariff contemplated that simultaneously all tariffs providing for allowances to industries for terminal service in spotting cars should be canceled, and it was stated: "The effect of such tariff would tend to reduce the amount of switching at present being accorded by carriers in spotting cars, which, as pointed out by the Commission in the U. S. Cast Iron Pipe & Foundry Company decision, is *in excess of their obligations.*" (Underscoring [italics] supplied.)

The proposed tariff provided that where spotting service could not be performed on private or industrial sidings by means of one simple switching movement, a uniform charge [fol. 36] should be applied for the remainder of the service; and that where an industry performed spotting service which was properly a carrier's duty, an allowance in an amount uniform to all such industries might be paid.

Due mainly to the opposition of the National Industrial Traffic League, the proposed tariff was never published. This record shows that the irregularities, inconsistencies and demand for remedial measures, which were found by the special committee to exist, still exist, and have since been greatly multiplied. As late as March, 1931, the eastern carriers were attempting by change in their formula to obtain uniformity, and in August of that year one of the largest eastern railroad systems declined to grant an allowance to a certain industry solely on the ground that it was not an iron and steel industry, although at that time and for a number of years previously this system and its component lines had been granting allowances to many industries regardless of the nature of their business.

The futile efforts of the carriers in the past to obtain uniformity, and to limit allowances to services which are properly a part of their duty, offer no ground for belief that future efforts on their part will accomplish such objectives. That such conditions exist was recognized by the Congress in section 2 of the Emergency Railroad Transportation Act, 1933, wherein it is stated that "in order to

foster and protect interstate commerce in relation to railroad transportation, by preventing and relieving obstructions and burden thereon resulting from the present acute economic emergency, and in order to safeguard and maintain and adequate national system of transportation," the office of Federal Coordinator of Transportation was created. Section 4 provides that one of the purposes of that act [fol. 37] is to control allowances, accessorial services, and the charges therefore, and other practices affecting service or operation to the end that undue impairment of net earnings may be prevented, and other wastes and perventable expense avoided. That emergency act in no wise affected our power with respect to the practices involved in this proceeding. It emphasized, however, the necessity for this investigation which we had previously begun. Before discussing the general testimony, it may be helpful to consider the applicable legal principles as announced in the decisions of the courts and this Commission.

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Discussion of the Applicable Law

Section 1(3) of the Interstate Commerce Act defines "transportation" to include all services in connection with the receipt and delivery of property transported, and paragraph 4 of the same section, makes it the duty of common carriers to provide such transportation upon reasonable request therefor at just and reasonable charges. The carriers are not only entitled to reimbursement for the cost of rendering the service and a reasonable profit, Southern Ry. Co. v. St. Louis Hay & Grain Co., 214 U. S. 296, but it is unlawful for them to transport property free, except pursuant to law. American Exp. Co. v. United States, 212 U. S. 522; Louisville & N. R. Co. v. United States, 282 U. S. 740.

Whatever transportation service or facility the law requires the carriers to supply they have the right to furnish. Atchison, T. & S. F. Ry Co. v. United States, 232 U. S. 199. A carrier may, however, employ an agent to perform [fol. 38] transportation service for it. United States v. Fruit Growers Express Co., 279 U. S. 363. And a carrier may receive services from an owner of property transported or use instrumentalities furnished by the latter, in which cases the carrier shall pay for them subject to the restriction

that the compensation be no more than is reasonable. United States v. Baltimore & O. R. R. Co., 231 U. S. 274. These principles should be kept in mind in considering the discussion which follows:

Over a period of many years the courts and this Commission have had numerous occasions to consider the services which the carriers are obligated to render for the compensation they receive in the form of the line-haul freight rates. In Associated Jobbers of Los Angeles v. Atchison, T. & S. F. Ry. Co., 18 I. C. C. 310, 314, we said:

The American railroad rate has always been recognized as covering the full service which the carrier gives—in furnishing the car, a proper place at which to load it, the conveyance of that loaded car, and its terminal delivery.

In that case the attack was made upon the charge of $2.50 per car made by carriers at Los Angeles, Calif., for delivering or receiving carload freight at industries located upon spurs or side tracks within their switching limits, when such carload freight was moving incidental to a line haul and the carrier receiving or delivering such freight received the whole or any part of the compensation for such line haul. In discussing the facts we pointed out that freight moving in carloads was delivered at team tracks, at freight sheds, or at industry spurs, and that at team tracks and freight sheds no charge was imposed for the receipt or delivery of such carload freight over and above the freight rates named in the tariffs, while at industry [fol. 39] spurs an additional charge of $2.50 was imposed on every loaded car moving in or out. We said further:

These industry spurs vary in length, some leading directly from the main track into or alongside of the industry served, while others are of greater length and branch at one or more points, short spurs running off from what is known as the "lead" to serve other industries in the immediate neighborhood.

In finding that the charge was illegal and unjust, which decision was upheld by the Supreme Court in the Los Angeles Switching Case, 234 U. S. 294, we said that the industrial spurs under consideration were of a totally different character and of a different nature from those considered in Chicago & A. Ry. Co. v. United States, 156 Fed.

558; Solvay Process Co. v. Delaware, L. & W. R. Co., 14 I. C. C. 246, and in General Electric Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. 237.

In the last case the General Electric Company asked that we determine and fix the just and reasonable sum that it might charge the carriers for services performed and instrumentalities furnished by it in connection with the interstate movement of its own property. The instrumentalities referred to were complainant's storage tracks which it had constructed, and the locomotives and electric motors which it owned and operated within the limits of its extensive plant at Schenectady, N. Y. The services which the industry claimed to perform consisted of handling the loaded or empty cars between the storage tracks where the cars were interchanged with the carriers, and the various shops, foundries, and other buildings where cars were ordinarily unloaded or loaded. Complainant asserted that its activities and equipment with respect to such movements were services [fol. 40] directly rendered and instrumentalities furnished by it in connection with the transportation of its own property within the meaning of section 15 (13) of the Act; and that it ought to have reasonable compensation therefor from the carriers. We said at page 242:

The real question before us is whether complainant, under the amended act to regulate commerce, may lawfully make any charge and demand any compensation from the defendants upon the facts shown of record. Is the service performed by it a carrier's service? Is it a part of the transportation undertaken by the carrier? Or is it a shipper's service—something apart from the transportation, and which is done by the shipper for its own benefit?

To that question we have given such thought and reflection as its importance demands, and our conclusion is that the handling of the cars by complainant within the inclosure of its plant has not been shown to be a carrier's service—something done by the complainant which the carrier ought to do as a part of its contract of transportation—but that the storage tracks and switch tracks and all the arrangements and facilities for moving cars within its plant inclosure are for the complainant's own convenience and are necessary to the economical conduct of its business.

While the defendants now spot cars within the switching districts of cities and towns on their respective lines, such

service amounts practically to no more than placing the cars upon sidetracks. The switch tracks leading to industries served by the defendants in the great majority of cases are from 400 to 500 feet long. In all cases the defendants reserve the right to use such tracks for storing cars when that can be done without inconvenience to the [fol. 41] industries to which they lead. And at all times both companies reserve the further right to pass over such tracks to make deliveries to industries beyond. There is,

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therefore, in a measure a joint ownership of the tracks or a joint right in the use of them, and to that extent they may be said to be system trackage. It is on such tracks that the defendants customarily spot cars free of charge. With an engine already coupled to a car, it involves no appreciable additional cost and no appreciable delay to put the car at the leg of an elevator or at the door of a warehouse instead of merely running it onto the sidetrack far enough to clear the main line. And such switching can be done at the reasonable convenience of the carrier. But here we have within the complainant's inclosure an elaborate system of broad-gauge switching tracks 12 miles in length operated both by steam and electric power and a narrow-gauge system 7 miles in length operated by electricity only; and on both systems a very extensive, purely internal switching is conducted by the complainant with its own motive power and crews. The defendants have no right to make any use of those tracks. They are not system tracks even in the qualified sense above mentioned, but are the exclusive tracks of the complainant. And the switching can not be done by the defendants at their reasonable convenience and whenever an engine is at hand to do it, but only at such time and in such manner as will not interfere with the complainant's switching engines and crews. In our judgment, in such cases a carrier has performed its full duty under its contracts of transportation when it delivers or accepts cars at some reasonably convenient interchange [fol. 42] point, such as the storage tracks heretofore described that were constructed for that purpose by the complainant.

The matters there in controversy before us were litigated anew in New York Central & H. R. R. Co. v. General Electric

Co., 219 N. Y. 227, 114 N. E. 115. In its opinion the Court of Appeals of New York at pages 117 and 118 said:

The decisive question must therefore be whether the switching done by the defendant within its plant between the storage tracks and the platforms of its mills is work that the plaintiff was bound to do as a part of transportation. To put it in another form, the question is, Where does transportation begin and end? The published tariffs to Schenectady establish switching limits extending from Sandbank to Carmen and Stony Lane. Delivery within those limits is paid for when rates are collected to Schenectady. Since the limits embrace the defendant's plant, there is no dispute that delivery at the plant is covered by the rate. The difficult thing is to ascertain when delivery at the plant is made.

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* * * Industrial spurs, within the switching limits designated by the carrier, are to be regarded, indeed, for many purposes, as an extension of the terminals. Los Angeles Switching Case, 234 U. S. 294, 34 Sup. Ct. 814, 58 L. Ed. 1319. But reasonable delivery does not involve the carrier's cooperation in the division of labor and of functions between the sections of a gigantic plant. This network of tracks is

and must be under unified control. Order and method must reign. * * * The engines that move within this plant [fol. 43] are not doing work that the plaintiff ought to do, or effectively could do. They are doing the defendant's work. They are "plant facilities."

The Court had earlier said at page 117:

Transportation includes delivery. Under the plaintiff's published tariffs it does not include the work of loading and unloading. Official Classification, 38, Interstate Commerce Commission. But whatever is essential in order to complete delivery, the carrier must do. That is what it is paid for when it collects its regular rates. If it fails to make delivery, and the consignee through its own instrumentalities completes the work, an allowance is due. Interstate Commerce Commission v. Diffenbaugh, 222 U. S.

42, 32 Sup. Ct. 22, 56 L. Ed. 83; United States v. B. & O. R. R. Co., 231 U. S. 274, 293, 34 Sup. Ct. 75, 58 L. Ed. 218. But no allowance is due for service rendered by the consignee after delivery has been made and transportation is at an end. An allowance in such circumstances would constitute an unlawful rebate. That is true of interstate shipments under the laws of Congress. Act to Regulate Commerce (Feb. 4, 1887) 24 Stat. L. 379, secs. 2, 3, 17; Act of Feb. 19, 1903, 32 Stat. L. 847; Act of June 29, 1906, 34 Stat. L. 584. It is true of intrastate shipments under the laws of New York. Public Service Commissions Law (Laws 1907, c. 429), secs. 31, 32.

The distinction between plant facilities and true agencies of transportation has been expressed by us in numerous decisions. Thus in Brimstone R. & Canal Co. Excess Income, 189, I. C. C. 437, decided January 27, 1933, Division 1 said at page 455:

It is the carrier's contention that the switching from the hold tracks to the loading tracks and vice versa, is a [fol. 44] common-carrier operation performed by it as a part of its transportation obligation and is comprehended within the rate division received by it. On the other hand, our interested bureaus contend that those switching operations are conducted for the convenience of the sulphur company and that the costs thereof should be allocated to plant expenses and not to carrier operating expenses. The evidence in this case, so far as these tracks and operations thereover are concerned, is substantially the same as that considered by us in Divisions Received by Brimstone R. & Canal Co., 88 I. C. C. 62, 69, where we said:

Where the facilities of an industry are so constructed that delivery at its plant is rendered impracticable, the duty of the carrier is fulfilled if it holds itself out to receive and deliver on a convenient interchange track. General Electric Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. 237. The

service of the proprietary company—(Union Sulphur Company)—in moving cars from the storage tracks to the sulphur bins and returning such cars, loaded, to the storage tracks, is no part of the common-carrier operations of the Brimstone.

We reaffirm that conclusion, and hold that the storage or hold tracks were a facility used as a convenience of the sulphur company; that the delivery of inbound empty cars thereon or on the loading tracks terminated the common-carrier obligations of the carrier so far as inbound empties were concerned; that on outbound shipments of loaded cars the common-carrier transportation commenced only when the cars were delivered to the carrier for final movement [fol. 45] to destination; that the intermediate switching between the hold tracks and the loading tracks was a plant service; and that the expense of such switching should not be included in railway operating expenses. In arriving at this conclusion we have not overlooked our decisions in other cases cited by the carrier, which we find clearly distinguishable on the facts as well as on principle.

The question whether or not there is an additional service in connection with industrial spur tracks upon which to base an extra charge, or whether this is merely a substituted service, which is substantially a like service to that included in the line-haul rate, is a question of fact to be determined in each case.

We have considered many cases involving the question of allowances under section 15 (13) to shippers for instrumentalities and services rendered in connection with the handling of cars to, from, and within industrial plants. The decisions in most of those cases did not go to the merits of the allowances, as such, but were founded upon the provisions of either section 2 of the act prohibiting unjust discrimination, or section 3 of the act, prohibiting undue prejudice or preference. The findings in Allegheny Steel Co. v. Director General, 60 I. C. C. 575, 578, may be taken as typical of the findings in such cases. We there said:

The facts of record are not deemed such as to support a finding of unreasonableness, but we find that in respect of interstate carload traffic moving between the trunk line and loading and unloading points within the limits of complainant's plant, the failure of the defendants to perform the switching and spotting service with their own motive power, or to make an allowance to complainant covering the cost of that service performed by it does and will for the [fol. 46] future subject complainant to unjust discrimination as between it and similarly situated competitors in the

Pittsburgh rate district for whom such services are performed by the defendants without additional charge or to whom allowances are made for the performance thereof.

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It was left to the discretion of the carriers to determine how the unjust discriminations or undue preferences were to be removed, and they generally complied by granting allowances to the complaining industries. These cases are therefore of little or no assistance in considering the broad question whether the services performed by the industry and for which an allowance is paid by the connecting line are, as a matter of fact, transportation services which the carriers are obligated to perform, or whether such services are plant services.

In a relatively few cases the question of such allowances has been considered upon its merits. In United States Cast Iron P. & F. Co. v. Director General, 57 I. C. C. 677, the industry sought an increased allowance for spotting cars within its plant. In the course of its opinion, holding that the propriety of an increased allowance had not been demonstrated Division 2 at page 681 said:

A carrier is ordinarily under a legal obligation to effect delivery under a transportation rate. The nature and extent of delivery of carload traffic has differentiated with the increasing complexity in the development of industrial enterprise. Perhaps the most common, if not the standard, form of delivery for carload freight is the setting of a car on the so-called team tracks of the carrier, where it may be conveniently unloaded, usually by the consignee. Another common form and a substitute for team-track delivery is the [fol. 47] switching of a car to the private siding of a consignee whose place of business is contiguous to the trunk line, clear of the main track. It is indisputable that the trunk line carrier may be required to perform these or equivalent services of delivery without charge in addition to the transportation rate, or, if it choose, may employ an agent to render the service for it. This agent may be the shipper or owner of the property transported, with the limitation that the charge or allowance for the service may be no more than just and reasonable.

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Switching allowances to large industries have developed in certain parts of the country until in many instances they are little better than undue preferences, and represent service which we would, ab initio, long hesitate to direct a carrier to render in effecting delivery of carload freight. They are, without doubt, frequently compelled by the fear of loss of large tonnage; they deplete unnecessarily the revenues of the carriers and thus tend to shift the burden of paying for such expensive deliveries from the shoulders of the recipients, where it belongs, to the shoulders of other shippers who receive only average delivery service.

This case was cited with approval and followed in Lehigh Portland Cement Co. v. Director General, 62 I. C. C. 231; Whitaker-Glessner Co. v. B. & O. R. R. Co., 63 I. C. C. 47, and Terminal Allowance to St. Louis Coke & Iron Co., 85 I. C. C. 591.

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In Columbia Mills v. Delaware, L. &. W. R. Co., 118 I. C. C. 112, Division 1 found that the failure or refusal of the carrier to compensate complainant, out of the line-[fol. 48] haul rates, for the services performed by the latter in switching carload shipments between points within its plant and the point of interchange with the carrier, and in checking, weighing, loading, and unloading less-than-carload shipments delivered to or forwarded from the plant in trap cars, was not shown to violate any provision of the act.

On behalf of the National Industrial Traffic League and others, it is urged that the decision in Car Spotting Charges, 34 I. C. C. 609, should be regarded as finally decisive upon the proposition that freight rates cover the entire transportation service; and that the so-called spotting service is included in the line-haul rate by practice and custom and under legal decisions. This case was decided July 6, 1915, and that it is not finally decisive of the various questions presented in the instant proceeding is demonstrated by the many decisions rendered upon similar questions during the 20 years which have intervened. In that case we considered the propriety and reasonableness of a tariff charge for placing cars upon industry spurs or private sidings, or upon the tracks of industrial plants, at convenient points

for loading and unloading, and for the movement incident thereto, over the track or tracks of the industry. As defined in the suspended tariffs there under consideration, the charge was to cover the following service:

"Spotting" or spotting service, as used herein is the service beyond a reasonably convenient point of interchange between road haul or connecting carrier and industrial plant tracks, and includes:

(a) One placement of a loaded car which the road haul or connecting carrier has transported, or

(b) The taking out of a loaded car from a particular loca- [fol. 49] tion in the plant for transportation by road haul or connecting carrier.

(c) The handling of the empty car in the reverse direction.

The industries to which the charge was to be applied were divided generally into three lists: (1) industries having industrial plant tracks connecting with the tracks of the carriers on which industrial tracks the carriers had performed spotting service in the past, and upon which they would, if desired, have continued to perform such service on and after the effective date of the tariff at the charge provided therein; (2) industries having industrial plant tracks connecting with the tracks of the carriers upon which industrial tracks the industry had performed the spotting service in the past. The charge of the carriers for performing spotting service for the industry on its plant tracks connecting directly with the tracks of the carriers would have been as per the tariff in question provided the performance of the service by the carriers was shown to be practicable and was agreed upon. The third was a list of industrial railways and provided that spotting service on or over the tracks of those railways could be performed only by special agreement.

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As we pointed out, in general the industries were arbitrarily selected, and ranged from the ordinary mill or factory with a single spur or private siding to the large iron and steel industries having an interior system of rails called the plant railway. On page 616 we referred to our finding

in the Los Angeles Switching Case, supra, that where the service was merely a substitute for team-track receipt and delivery the line-haul rate covered the service for the reason [fol. 50] that rates generally in this country had been constructed upon that basis. We then stated:

The mere size or complexity of the industry is not controlling in determining whether or not the line-haul rate covers the receipt or delivery of freight at the door of the plant. The service involved in the placement of cars for loading or unloading at an isolated industry to which a single spur leads may be as great as that rendered in the placement of cars for loading or unloading in a large plant having an intricate system of interior tracks. Indeed, there is testimony tending to show that by reason of greater density of traffic and greater tonnage the cost of spotting at the larger industries is less per car than at the smaller industries. At the large industries the trunk line may render interplant services in the movement of cars from place to place within the plant during the processes of manufacture which it has no occasion to render at smaller industries, and for such services an additional charge should be made; but where the service rendered is merely a substitute for the service which would be required if the movement were to or from a team track, an industry spur, or a private siding, nothing should be added to the charge for the line haul.

On page 618 we said:

There may be cases in which the spots at which cars are placed for loading and unloading in complex industries are so located that the request for the receipt and delivery of carload freight at such spots could not, in view of general usage, be regarded as reasonable, and where a charge for the spotting service in addition to the line-haul rate might therefore be justified, but the mere fact that an industry is complex, or that it requires an interplant service in addition to the receipt and delivery of car- [fol. 51] load freight, is not sufficient to justify an additional charge for the placing of cars at the door of the industrial plant for the receipt or delivery of carload freight. The line-haul rate, however, covers only one placement of the car for loading or unloading, and an additional charge should be made for each additional placement of the car for that purpose.

We found that respondents had not justified the tariffs under suspension but stated:

The respondents may, however, file new tariffs, providing for spotting charges in those instances in which the terminal services performed exceed the services which under established custom, is, (sic) or should be,

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performed for the line-haul rate, in accordance with the views expressed in this report.

The carriers took no action to comply with our findings other than to cancel the tariffs under suspension.

The Car Spotting Case should be considered in connection with the Second Industrial Railways Case, 34 I. C. C. 596, which was decided five days before the former case and immediately precedes it in the bound volume. In that case we divided the industrial operations into six groups. Our discussion of the last of these groups, appearing at pages 607-8, is particularly pertinent here. We said:

The sixth group is composed of industrial plant tracks which are neither owned nor operated by common carriers and are not dedicated to public use, the ownership and right of use being in the controlling industries which operate them. They ask that allowances be paid them out of the locality basis of rates under section 15 of the act, upon the theory [fol. 52] that they are performing a service of transportation which the trunk line is obligated to perform under the rate structure. This question was considered in the General Electric Co. and Solvay Process Co. cases, supra, and it is not necessary to enlarge upon it here. These cases illustrate the passing of the necessity for that provision of section 15 under which shippers may be compensated by the trunk lines for their facilities used in the handling of their own shipments. This legislative measure was enacted to give this Commission the means of eliminating certain unjust discriminations. The gradual elimination of discriminatory practices by other processes leaves this provision of the law to be used as a cloak for various payments which but for it would be looked upon as rebates.

Certainly it cannot be said that we have found that the transportation service which a carrier is obligated to per-

form under a line-haul rate includes the placement of the car at the point of loading or unloading in all instances and under all circumstances.

It is also urged that the statement of the court in New York Central & H. R. R. Co. v. General Electric Co., supra, that "a railroad's duty to carry is a duty to carry over its right of way" is diametrically opposed to the Supreme Court's conclusions in Interstate Commerce Commission v. Diffenbaugh, 222 U. S. 42, and in Mitchell Coal & Coke Co. v. Pennsylvania R. Co., 230 U. S. 247. We do not agree that this is correct. The service involved in the Diffenbaugh case was that of elevation, and the court held that "As the carrier is required to furnish this part of the transportation upon request, he (Peavey) [5] could not be required to do it at his own expense, and there is nothing to prevent his hiring the instrumentality instead of owning [fol. 53] it. In this case there is no complaint that the rate out of which the allowance is made is unreasonable, and it is admitted that three-quarters of a cent barely would pay the cost of the service rendered without any reasonable profit to Peavey & Company for the work." In

the Mitchell case, the court said "to pay shippers for doing their own work would have been a mere gratuity, and if here the carrier was not bound to haul from the mine it had no more right to pay these companies for bringing their coal over the spur track to the junction that it would have had to pay a merchant for hauling his goods in a wagon to the railroad depot", and it said further "Inasmuch as this rate included the haul the Railroad was bound to transport the coal from the mouth of the mines, and could use its own engines for that purpose or it could employ the Coal Companies to render that service, paying them proper compensation therefor." There is no conflict between the language of the court in the General Electric case and the Diffenbaugh and Mitchell cases.

In National Industrial Traffic League v. Aberdeen & R. R. Co., 61 I. C. C. 120, 123, we said:

The demands upon a carrier which lawfully may be made are limited by its duty. Gt. Northern Ry. v. Minnesota, 238

[5] Parenthetical insertion ours.

U. S. 340, 346. But it is not its duty as a common carrier to enter into a contract to lease a railroad siding to a shipper or to enter into an agreement to operate privately owned sidetracks. The liability clauses complained of do not involve the question of rates, nor the matter of facilities to be furnished by the railroad company for the transportation of property under its obligation as a common carrier, and section 1 does not confer upon us the power to pass upon [fol. 54] liability clauses of leases or of agreements for the maintenance, use, and operation of such individual sidetracks.

And in American Fuel Co. v. Atchison, T. & S. F. Ry. Co., 123 I. C. C. 101, 112, we said:

Service over private tracks or plant-facility tracks by a common carrier subject to our jurisdiction is neither compelled nor prohibited under the interstate commerce act. To furnish it or withhold it is within the discretion of the carrier. In either event the statutory inhibition against unjust discrimination or undue prejudice must be observed. Moreover, where, as here, the defendants have elected to perform the service they should publish tariffs to cover it.

To the same effect are the decisions in Transfer in St. Louis and East St. Louis by Dray and Truck, 155 I. C. C. 129; King Stone Co. v. Chicago, I. & L. Ry. Co., 160 I. C. C. 245; and Winnsboro Granite Corp. v. Southern Ry. Co., 176 I. C. C. 481.

If a carrier operates over private industrial tracks it is because in its discretion it elects to do so, and its legal obligation in such operations extends no farther than is covered by the compensation it exacts for the services performed. In other words the obligation upon the carrier in such circumstances is to be measured by the compensation received and not by any definite duty otherwise placed upon the carrier by the statutes. The payment by the carrier to a shipper for rendering services upon private tracks which are not contemplated by the charges of the carrier would be "a gift—a rebate—a thing ipso facto illegal and prohibited by the statute" * * *. Mitchell Coal & Coke Co. v. Pennsylvania R. Co., supra. Further, the rendition by the carrier of such services as are not

contemplated by the compensation which it receives free and without additional charge is prohibited by section 6 of the act. American Exp. Co. v. United States, supra; Louisville & N. R. Co. v. United States, supra.

As previously stated, whatever transportation service or facility the carrier is required to supply it has a right to furnish. Atchison, T. & S. F. Ry. Co. v. United States, supra. When a carrier is prevented from performing the service by the election of the industry to perform it, and when the service of the carrier would not meet the needs and convenience of or be satisfactory to the industry, the carrier's duty to perform the service under the line haul rate is discharged, and there is no obligation resting upon it to make an allowance to the industry for performing the service. Allowances to Texas Gulf Sulphur Co., 96 I. C. C. 371.

When a shipper seeking an allowance for performing a carrier service within its plant makes no demand of the trunk lines for performance and the carriers could not perform such service with available equipment because of excessive track curvature, any inequality which occurs because the shipper's competitors receive for the line-haul rate a service similar to that for which it requests an allowance is due to the position which it has assumed rather than to undue prejudice which the carriers could be required to remove. United States Cast Iron Pipe & Foundry Co., Inc. v. Director General, 62 I. C. C. 339.

If the shipper, for its convenience, prevents the carriers from performing the final placement of cars by a single movement, the carriers need not absorb the costs of switching from points of interchange to points of placement within the plant, when performed by the shipper. Marting Iron & Steel Co. Case, 48 I. C. C. 620.

[fol. 56] No legal obligation rests upon a carrier to perform switching and spotting service solely at a shipper's convenience, and a shipper is not entitled to an allowance for these services if the carrier is ready and willing to perform them, but is not permitted to do so by the shipper. Stewart Furnace Co. v. Pennsylvania R. Co., 68 I. C. C. 528.

In the Industrial Railways Case, supra, we found and concluded with respect to certain industries listed on pages

236 and 237, that all the service by the line-haul carriers beyond a reasonably convenient point of interchange between the rails of the carrier and the rails of the industry, either within the plant or without the plant, was a shipper's service and not a service of transportation which the line carriers may perform without charge or may allow for out of the rate through divisions or otherwise when performed by the industry or by its industrial railroad, and that the facilities used by the industry in performing these services, whether separately incorporated or not, were plant facilities and plant equipment. We concluded and found that the delivery of a car by a line carrier upon the interchange track was a delivery to the industry, that the line carriers were not compensated in their rates for services beyond that point, and that the allowances therefor were unlawful rebates paid for the traffic, and when performed by the line carriers were unlawful rebates in service, paid for a like purpose. In the supplemental report in that case, 32 I. C. C. 129, which followed the decision of the Supreme Court of the United States in the Tap Line Cases, 234 U. S. 1, we modified our findings in the first report with respect to industrial common carriers so as to comply with the decision of the court. There is nothing

in the supplemental report which overrules in any particular the findings in the first report with respect to the pay-[fol. 57] ment of allowances to industries for performing their own plant service. In fact, we stated that:

• • • The General Electric Company case, supra, the Solvay Process Company case, supra, and the Crane Iron Works case, 17 I. C. C. 514, were decided upon the facts, circumstances, and conditions appearing in connection with each. Those cases, however, differed from the Tap Line cases and from the instant case in that in each of the former cases the industrial railway, or the industrial corporation which in fact or effect owned it, sought to have us require the trunk line roads to accord the industrial roads allowances or divisions which the trunk line roads were unwilling to accord and which they contended would be unlawful.

We then stated:

We think that in the light of the decision of the Supreme Court in the Tap Line cases it is our duty to so modify our

findings in the original report herein as to permit the trunk line roads, if they so elect, to arrange by agreement with any of the industrial roads mentioned in our former report which are common carriers under the test applied by the Supreme Court in the Tap Line cases, and which perform a service of transportation, for a reasonable compensation for such service in the form of switching charges or divisions of joint through rates.

In the Second Industrial Railways Case, supra, we said at page 601:

If the service in any instance is a plant service the trunk line carriers can not lawfully compensate the shipper itself, or indirectly through its incorporated plant railroad, for the use of its plant tracks or for switching the shipper's cars over them with its own motive power.

[fol. 58] In Chesapeake & O. Ry. Co. v. Westinghouse, Church, Kerr & Co., Inc., 270 U. S. 260, the Supreme Court in affirming the opinion of the Supreme Court of Appeals of Virginia, 138 Va. 647, 123 S. E. 352 stated:

The service of spotting cars was included in the line haul charge under both interstate and state tariffs.

It is urged on brief and exceptions that this expression of the court is conclusive in all cases that the service of spotting cars is included in the line-haul rate. The facts as shown by the decisions of the courts are that during the World War the defendant contractors were constructing embarkation facilities at Newport News, Va. Large quantities of material for use in such construction were delivered by the C. & O. at that point, and there was great traffic congestion in its railway yard. Because of this and other activities growing out of the war, the railway was unable to deliver goods or freight to the contractors within a reasonable time so that the latter's building operations were greatly impeded. To remedy this condition the

C. & O. by contract assigned an engine and crew to the exclusive use of the contractors' traffic, payment to be made therefor as prescribed in the contract. The contractors later refused to pay for such service and action was brought

to recover under the contract. In its decision the lower court said:

It is perfectly clear under the tariffs on file, that the line haul rates on these cars entitle the consignees to have them "spotted" or placed upon these private delivery sidings to be unloaded. As expressed by the witness Ford, the consignee was entitled to *one placement of the car on a track agreed* upon by the railroad and the party owning the [fol. 59] commodity, which would either have to be a general delivery, public delivery you might say, or private industrial siding. That this expresses the true construction of the applicable rate which was published and filed is conceded. (Italics ours.)

Comparison was made by the Supreme Court of the service covered by the C. & O. tariff, with that considered in Car Spotting Charges, supra, and in Downey Ship Building Corp. v. Staten Island Rapid Transit Ry. Co., 60 I. C. C. 543. In the Downey case Division 2 at page 547 defined the carrier's obligation as involving "only one placement of a car and the movement to be made without interference and over the trackage suitable for the service."

The Supreme Court further stated:

The service by special engine and crew contracted for and given was not spotting solely for the convenience of the shipper. It was the spotting service covered by the tariff. * * * The carrier is here seeking compensation in excess of the tariff rate for having performed a service covered by the tariff. This is expressly prohibited by the Interstate Commerce Act. * * * A contract to pay this additional amount is both without consideration and illegal. * * * To so assure performance to a shipper was an undue preference. Hence the contract would be equally void for illegality on this ground.

Expressed differently, it would be unlawful for a carrier to contract to perform a preferential service. There is nothing in the decision of the court to indicate that the service contemplated by the line-haul rate was in excess of simple switch placement or in excess of team-track spotting. We think it is beyond question that by the operation of their own locomotives with payment therefor by respondents, or by the assignments by re-

spondents of engines and crews for the exclusive service [fol. 60] at specified industries heard on this record, such industries secure a superior and preferential service, and one which is not afforded by the carriers in the performance of ordinary operations to shippers who neither own nor have locomotives assigned for their exclusive use. See Riter-Conley Mfg. Co. v. Director General, 58 I. C. C. 327, 330.

Nor can it be overlooked that there is a financial gain to industries which utilize their own locomotives in securing for themselves this superior convenience regarded by the Supreme Court as a preferential service. In the practical application of the carrier's rules for determining the amount of allowances to industries, it must be understood that in making cost studies at the plants

herein considered the locomotive service is performed in a manner most convenient to industrial needs. As many movements are made between the interchange tracks and the points of unloading or loading as the industrial operations require, and the number of engine hours devoted to this service is taken into account in determining the cost to the industry upon which the allowance is based. Respondents pay for such service to the advantage of the industry from both a financial and a service standpoint. The assignment of locomotives by carriers for use by industries under the latter's direction and control likewise results in a superior convenience and preferential service.

To summarize it is well settled that carload freight may be delivered or received by carriers upon a private industrial siding. Under general custom and practice the line-haul rate entitles a consignee to have his shipment delivered at a reasonably convenient place, whether this be within a plant, or upon a track agreed upon by [fol. 61] him and the carriers. See Chesapeake & O. Ry. Co. v. Westinghouse, Church, Kerr & Co., Inc., supra, the case affirmed by it, and cases cited therein. See also Industrial Railways Case, supra. It is likewise clear from these same authorities that service beyond such reasonably convenient points is not a service which the carrier is obligated to perform or pay for under its line-haul rates.

Section 6 (7) provides that no carrier shall "charge or demand or collect or receive a greater or less or different

compensation for such transportation of passengers or property or for any service in connection therewith, between the points named in such tariffs, than the rates, fares and charges which are specified in the tariff filed and in effect at that time." A further provision is that no carrier shall "refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are specified in such tariffs."

The statute prohibits every method of dealing by a carrier by which it directly or indirectly charges less than the published tariff rates. In the absence of a tariff provision, for a carrier to assume under its line-haul rates an obligation which is not properly includible under such rates is clearly in violation of section 6 of the act, and necessarily preferential. As said in Davis v. Cornwell, 264 U. S. 560, citing Chicago & A. R. Co. v. Kirby, 225 U. S. 155: "It was not necessary to prove that a preference resulted in fact. The assumption by the carrier of the additional obligation was necessarily a preference."

[fol. 62] Ex Parte No. 104, Part II—Sheet 23

Various Attitudes of Carriers With Respect to Allowances

For about 25 years we have considered cases involving the payment of allowances to industries for the performance of their terminal switching. The earlier cases involved industries in the eastern industrial sections, and allowances gradually became more numerous in that part of the country until about 1915. Their spread in Pennsylvania and Ohio was more rapid after the end of Federal control. In 1921, the first important allowance was granted in the Illinois-Indiana industrial region, and others rapidly followed extending into the lower part of the Mississippi Valley west of the river where allowances had previously been made to certain lumber companies as a result of the Tap Line Case, supra. Some allowances have been granted in the north central and extreme northwest sections and at present the only sections of the country where allowances are not paid are New England, the Southeast and the extreme Southwest.

The New England carriers maintain the position that allowances are improper; that if an industry specifies a yard or location where cars are to be interchanged, the placing or receiving of the cars at such location constitutes delivery or receipt by the carrier under its line-haul freight rates; and that a further movement by industrial locomotives is a matter of internal arrangements of such industry and is no concern of the carrier.

Nearly all of the carriers south of the Potomac and Ohio rivers and east of the Mississippi have from the beginning resisted the payment of allowances. One of the vice presidents of a large southern carrier stated [fol. 63] the position of his company with reference to such payments substantially as follows: Speaking of a steel plant that had grown from a small industry through many years' operation, to a large industrial plant, he explained that in the beginning, the plant had required only a small amount of switching, which was then performed by carrier locomotives. The growth of the industry later required the constant service of one, then three locomotives which were operated and controlled by the industry. At the time the constant service of the first locomotive was required for the plant's needs, the carriers considered its obligations under the line-haul rates ended when cars were interchanged at reasonably convenient points, and thereafter performed no further service beyond such points. His testimony indicates recognition that a line of demarcation exists between the services included in transportation and those included in the industrial operations of a plant, and shows that this line should be drawn at the point where the carrier is prevented from performing at its ordinary operating convenience any further service, by the nature, desires or disabilities of a plant.

The position of this carrier is illustrative of that of the southern carriers generally. By maintaining this position these carriers have largely avoided discrimination, confusion, and the wasteful dissipation of their funds and revenues, which this record clearly shows in many cases result through the performance by carriers without charge of services in excess of their obligation under the line-haul rates or the through payment of

allowances to industries when they performed the spotting service.

[fol. 64] Rules Promulgated by Carriers for Cost Studies.

In the earlier allowances there appears to have been no uniform rule or definite formula in general use by the carriers in arriving at the cost to the industry for performing the service for which the allowance was paid. This condition existed until 1915. In Chicago, West Pullman & Southern R. R. Co. Case, 37 I. C. C. 408, 415, decided December 23, 1915, we announced certain principles which should govern in making allowances to industrial common carriers.

Following the principles there set forth certain formulas were evolved to compute costs to an industry where it performed the terminal switching service, which eventually were embodied in a printed circular. The first four paragraphs of this circular and the rules particularly pertinent to this report are reproduced as appendix A hereto.

The rules set forth in the circular were exhaustive, providing among other things, for the appointment of committees for the receipt of applications for, and consideration and disposition of allowances; for conducting cost studies by an accounting committee to determine the proper amount of an allowance; for methods to be used in making such studies, including the apportionment of time to be charged to the carrier or the industry, and the amount to be allowed for interest and depreciation on locomotives provided by industries; and the definition of certain terms, as well as setting forth a partial list of what should be considered as plant interruptions or interferences which terminated the carrier's transportation service. These rules clearly indicate [fol. 65] the attempt of the carriers to establish a line of demarcation separating transportation services from industrial services.

Slight variations occur in the various freight associations with respect to the applications for and consideration of allowances. In central territory the industry desiring an allowance makes application to the carriers serving it. This application is referred to the general committee consisting of traffic managers of the carriers embraced in that territory. The general committee places the application

in the hands of the terminal allowance committee, which after analyzing the proposal, if nothing is found objectionable, calls upon the accounting committee to make a cost study. The result of the cost study should determine the amount of the allowance to be granted, but in many cases the results of the study have been disregarded. Practically the same procedure is followed in the trunk line association.

Since 1923 the western trunk line association has maintained a similar organization for the handling of allowances, and an additional legal committee to which the proposed allowances are referred for an opinion as to the legal phases involved. In all cases final judgment is reserved for the traffic executive committees of the respective associations should their consideration be necessary. The associations' committees have only recommendatory

powers in any case, and the individual carriers affected always retain the right of action in making or failing to make an allowance.

The rules reproduced in the appendix were to some extent later modified, but these modifications will not be described in detail as the record deals principally with allowances made while the methods embodied in the circulars previously described were in force.

[fol. 66] The Practical Application of Rules for Making Allowances.

The first part of paragraph (3) 2 (c) of appendix A reads as follows:

The Interstate Commerce Commission has held that switching services by a plant facility for account of a carrier must not exceed the equivalent of team track or simple switch placement. If no unusual or marked difficulty of operation in a plant is presented, the service may be considered not in excess of a simple switch.

This part of the paragraph is included in the formula used in western trunk line territory, but the formula of the latter also contains the following sentence: "Any service in addition to that shall be at the expense of the industry."

This rule coincides with our conception of a carrier's duty with respect to the delivery and receipt of freight.

In the formula adopted in eastern territory, but not in that used in western trunk line territory, the following also appears:

If the plant requires some unusual, complicated, or extensive switching service in comparison with other plants of substantially the same type (but not necessarily of the same output), in the same vicinity, it shall be held that the service is in excess of a simple switch, and no allowance shall be made.

A diligent but unsuccessful effort was made to determine from officials of the committees, and other witnesses, the reason for the inclusion of the last sentence in paragraph (3) 2 (c). As written it is confusing, contradictory with other parts of the same paragraph, and its purpose could not be explained. The preceding sentences in the same [fol. 67] paragraph seem to recognize that if unusual or marked difficulty of operation in a plant is presented, the service should be considered in excess of team track or simple switch placement, and the additional service should be at the expense of the industry. The last sentence, on the other hand, holds that even though the service is unusual or of marked difficulty it shall not be considered in excess of team track or simple switch placement when other industries of substsantially the same type, in the same vicinity receive comparable service.

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Attention is directed to interruption and interference with the carrier's switching operations due to industrial operations as set forth in rules 6 and 8, and the definition of what should be considered as plant interruption and interference in rule 9. While these rules were promulgated by the carriers for their guidance, they have no binding force, and as shown by this record for all practical purposes they have been disregarded in every case where it appeared to a carrier in its interest to do so.

The reasons motivating the carriers to disregard or ignore these rules are usually grounded on consideration of traffic which can be diverted from other carriers to their lines by the payment of an allowance. The record discloses numerous cases in which unsuccessful formal complaints were brought before us by industries seeking an allowance.

Notwithstanding our finding that such industries were not entitled to allowances, the carriers later granted them.

The principal reason for the large increase since 1920, in allowances in the Chicago industrial area is the close relationship existing between the Elgin, Joliet & Eastern, one of the carriers serving many industries in that area, and a large industry which receives allowances at many [fol. 68] of its plants in the East. Because of the dominating influence of the parent industry, this carrier was not averse to making allowances, and in so doing disregarded the rules which had been drawn for the guidance of all carriers in making allowances. Competing carriers were thus forced to the same ends to secure or retain traffic. The practices give undue and unreasonable preference and advantage to the favored industry, and work undue and unreasonable prejudice and disadvantage to shippers in the same business who are not the beneficiaries of such allowances.

It is contended that in all cases where an industry performs its own spotting and receives an allowance therefor it can perform the work cheaper than the carrier, and that it is, therefore, in the interest of economy for the carrier to pay an allowance rather than perform the service itself. Doubtless this is true if it can be assumed that it is the carrier's duty to perform the spotting service in exactly the same manner as the industry finds it necessary to perform it in facilitating its operations. In making the cost studies the time consumed in moving cars between the interchange tracks and the points of loading or unloading within the plant is taken into account in determining the cost to the industry, regardless of the number of times the plant engine moves to and from the interchange tracks. Thus the industry by performing its own service is enabled to have cars spotted at its convenience and to the extent that it is compensated therefor by the carriers it not only obtains a service far in excess of any service the carriers would give under the line-haul rates should they undertake to perform the spotting service, but also a service in excess of that afforded other shippers dependent upon the carriers for such service. Compare, Chesapeake & O. Ry. Co. v. Westinghouse, Church, [fol. 69] Kerr & Co., Inc., Chicago & A. R. Co. v. Kirby and Davis v. Cornwell, supra. The industries generally use

small locomotives, have fewer men in the switching crew, and pay lower wages than the railroad. Thus if railroad engine-hour costs are computed on the basis of the number of engine hours charged by the industry to inter-

change switching, it is clear that the cost to the railroad would be greater. However, if the spotting service which the industry performs is not one which the duty of the carrier requires it to perform, the cost thereof whether great or small is of no concern and no economy to the latter.

Notwithstanding the fact that some industries are shown on the record to have intricate and complex systems of trackage consisting of numerous divisions and yards, each having a large number of tracks aggregating many miles in length, it is contended that even at the larger plants which now receive allowances, or which have locomotives assigned by respondents for exclusive use of such industries in performing the spotting service, no more than the equivalent of team track or simple switch placement was furnished by the carriers. It was attempted to establish that by dividing such industries in the sections, and further subdividing these sections into small yards and individual tracks, a point is finally reached where the carrier would perform no more service in reaching such location than it would perform in reaching team tracks or individual industrial tracks scattered throughout a city. We cannot grant the merit of such assumptions, for as we have seen the service afforded at such plants is in excess of the service which the carriers are obligated to perform under the line-haul rates and in excess of the equivalent of team track or simple switch place-[fol. 70] ment. Compare New York Central & H. R. R. Co. v. General Electric Co., supra.

The argument has also been advanced on brief that a general definition of what constitutes the equivalent of team track or simple switch placements by the carriers involved herein cannot be made. We are inclined to the belief that this argument has merit, but this assumption does not conflict with our view, which is that a determination of what constitutes a carrier's duty with respect to the equivalent of team track or simple switch placement can readily be ascertained at any individual industry by experienced railroad operating men or committees if honestly performed without consideration of traffic reasons.

A vice president of one of the larger railroad systems gave general testimony with respect to his study and efforts to obtain uniformity in the matter of allowances. His testimony taken as a whole, recognizes the general confusion and lack of uniformity that have existed among the carriers for many years, due largely to the fact that each carrier has pursued whatever course its self-interest dictated with respect to the advisability of granting an allowance.

He also referred to the competitive methods of transportation which have greatly increased since 1920, and recognized that due to such competitive methods the railroads of the country at present should firmly retain the advantage now accruing to them in the performance of spotting service, maintaining that the delivery and receipt of freight upon private industrial sidings is one of the most important advantages that railroads have in retaining their close association with the shippers, with consequent traffic benefit to the railroads. He considers it entirely proper for a car-

rier to employ an industry as its agent to perform spotting service where the industry operates its own power, so long [fol. 71] as the allowance for such spotting is less than the cost to the carrier, and where the carrier could itself perform such service. Clearly this latter statement means that where a carrier could not, for any reason perform the service, an allowance would be improper. Further, as we have previously shown, the allowances which the carriers pay are usually based upon actual cost subject to a certain maximum amount. This cost is determined in part by the number of engine hours devoted to the spotting service regardless of the number of movements to and from interchange tracks made by the plant power.

Industrial Weighing

Practically all industries engaged in the production of iron and steel products, cement, sand and gravel, and similar heavy commodities, maintain track scales within their plants and weigh all cars handled both empty and loaded. The industries are thus enabled to keep an accurate record of the many materials and the grades thereof used in their operations. Weighing service, therefore, as carried on by industries is an indispensable part of the production and merchandising of their products.

Ordinarily the weights obtained by the industries are accepted by carriers for assessing freight charges, and the carriers are thus relieved of weighing on their scales. It is urged on this record that inasmuch as the carriers are relieved of the expense of weighing, the weighing service as conducted is equally beneficial to both the industries and the carriers. The record is entirely persuasive, however, that the industries maintain their scales and weigh their raw materials and finished products as well as the empty car entirely for their own benefit and convenience, and that the benefit derived by the carrier through the use of such weights is merely incidental.

[fol. 72] In practically all cases the unwillingness of the industries to accept the weights of the carriers and the consequent use of the industries' scales involves extra switching within the plants, and this accounts for the fact that in many cases the industries will not permit carriers to deliver or to receive cars directly at the point of unloading or loading, but require such delivery or receipt on tracks from which the cars can later be moved to the scales, weights ascertained, and the cars thereafter placed at the location desired by the industries. The manufacture of some products, for example, cement, requires ascertainment of the weight of all raw materials in order that these may be delivered at the point where manufacture begins, in the exact proportions necessary in delivering a product of the desired specifications. The movement of cars from the point where they are originally delivered or received to the scales for weighing, and their later placement would necessitate a charge for such movement if performed by a carrier. An industry by the use of its own locomotives thus avoids such expense, at the same time performs a service indispensable to its operations and in many instances receives payment by the carrier for such service. There is no indication on this record

that the individual respondents are unable or unwilling to render such weighing service upon their own scales as it is incumbent upon them to perform.

Illustrative of the necessity for plant weighing, the record shows one case where the switching service within the plant is performed by a locomotive jointly operated by several respondents. In this case cars are placed in an inter-

change yard within the plant by respondents. Such cars are later moved by the industry's locomotive to the scales, weighed, and placed in a second industrial yard also within the plant, and from this latter point are thereafter moved [fol. 73] by the respondents' joint locomotive to the numerous points of unloading within the plant without charge in addition to the line-haul rate. In this case the respondents have their own track scales, and are able and willing to perform the same weighing service for this industry that they perform for all other shippers. The industry is unwilling to accept the weighing service which it is respondents' duty to perform. Its operations require the use of its own scales with the consequent necessity of respondents' making a second movement of the cars without any compensation therefor. Under Rules 8, 9 and 10 of Appendix A, the scale is regarded as the point of interruption or interference and the service performed after such interruption or interference is chargeable to the plant.

Demurrage Rules

The Uniform Code of Demurrage Rules was promulgated early in 1910 as a result of recommendation of the Committee on Car Service and Demurrage of the National Association of Railway Commissioners, of which a former member of this Commission was chairman. Rule 3-E of the present code which was formerly 3-F provides:

Section E.—Except as otherwise provided in Section B, Paragraph 1, of this rule on cars to be delivered on interchange tracks of industrial plants performing the switching service for themselves or other parties, time will be computed from the first 7:00 a. m. after actual or constructive placement on such interchange tracks until return to the same or another interchange track. Time computed from actual placement on cars placed at exactly 7:00 a. m. will begin at the same 7:00 a. m.; actual placement to be determined by the precise time the engine cuts loose. (See Rule 2, Section A, Paragraph 2, page 31, Rule 4, Section C, page [fol. 74] 35, and Rules 5 and 6 pages 36 and 37). Cars returned loaded will not be recorded released until necessary billing instructions are furnished.

Note.—Where two or more parties each with its own power take delivery from the same interchange track, or

where the railroad company uses the interchange track for other cars, or where the interchange track is not adjacent to the plant and the industry uses the railroad's tracks to reach same, a notice of placement shall

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be sent or given to the consignee and time will be computed from the first 7:00 a. m. thereafter.

It does not differ materially from what was formerly Rule 3-F. Rule 5 of the code, the so-called "constructive placement rule", provides:

When delivery of a car consigned or ordered to an industrial interchange track or to other-than-a-public-delivery track can not be made on account of the inability of the consignee to receive it, or because of any other condition attributable to the consignee, such car will be held at destination, or, if it can not reasonably be accommodated there, at the nearest available hold point, and written notice that the car is held and that this railroad is unable to deliver will be sent or given to the consignee. This will be considered constructive placement.

It is significant that at the time these rules were adopted certain of the large industries which performed their own switching service proposed to have incorporated therein what is known as the industrial rule. This rule in substance provided that when cars were interchanged with minor railroads or industrial plants performing their own switching service, handling cars for themselves or other parties, [fol. 75] an allowance of 24 hours would be made for switching in addition to the regular time allowed for loading and unloading. If returned loaded an additional 48 hours free time would be allowed. The rule was tentatively approved by the sub-committee, and differed from what has just been stated in the fact that minor railroads were not included. After more mature deliberations, however, the committee reached the conclusion that it should have no place in the demurrage code, and in effect held that the carrier can make no allowance of any character to a shipper or receiver for doing what the carrier itself is under no obligation to do, and that an allowance in the form of additional time was just as unlawful as one in the form of money.

Section 1 (3) of the act includes "delivery" and "receipt" in connection with "transportation". Their ordinary signification must be applied to such words. Therefore, delivery, i. e., the act of delivering, release, transference or surrender, as applied to cars, must be taken as the act of the carrier in surrendering its control of the cars to the industry.

Generally all industries which perform their own spotting service have entered into average demurrage agreements with the carriers that directly serve them and this should be borne in mind when we come to consider overhead allowances.

Overhead Allowances

Many of the plants discussed in this report are reached directly by one or more carriers and are indirectly reached by other carriers through absorption of switching charges. Allowances are made to these plants on line-haul traffic by the carriers that reach them directly. These carriers make no allowances, generally speaking, on traffic on which they

[fol. 76] Ex Parte No. 104, Part II—Sheet 31

secure merely a switching charge. In these instances the carrier that absorbs the switching charge makes an allowance to the plant, and these allowances are hereinafter designated as overhead allowances. However, all cars whether transported by the carrier in line haul or switching service are taken into account in the demurrage records of the delivering carrier. The tariffs providing for the switching charges in some cases list the industries to which the switching charges apply, in others, the switching limits are defined, and in still others switching charges are specifically designated to apply from the interchange track of the connecting line to interchange tracks of the plant. Thus in the first two cases mentioned if it can be said that the switching charge applies from the interchange track of the connecting line to a final spot within the plant the line-haul carrier by the absorption of the switching charge has paid the delivering carrier for that service, and the action of the line-haul carrier in making an overhead allowance to the plant results in a double payment by it for a portion of said service. If on the other hand, the switching charge applies to the interchange track of the plant, and the plant requested the

switching carrier to perform the actual spotting within the plant beyond the interchange track, an additional charge would necessarily apply for that additional service. The plant by performing the service with its own power relieves itself of paying that charge, and receives an allowance therefor. There can be no justification for an allowance in this latter instance and the payment thereof is a pure rebate. The carriers assign as a reason for their failure to make an allowance out of the switching rate, instead of having the line-haul carrier make an overhead allowance, the fact that the revenue derived from the switching charge is too thin; further that the industry is performing a service [fol. 77] which the carriers paying the allowance are required to perform as part of their transportation duty. Just how the carriers could perform this service is not apparent. It is claimed the switching line is agent for the line-haul carriers, and the industry is the sub-agent. If this were true a separate average demurrage agreement should have been entered into with each line-haul carrier and not with the switching line. However, the position taken is inconsistent, because they state that the allowances are made to the plant to fulfill what they regard as their obligation in spotting the cars at the point of loading or unloading, and that the allowances paid are in all cases less than the cost would be to the carrier if it undertook to perform such service. Manifestly, this would likewise be true with respect to the switching service if as a matter of fact the switching charge can be said to extend to the point of loading or unloading within the plant. Nevertheless, these carriers say that rather than pay an allowance on such traffic they would elect to perform the service themselves. Nothing seems clearer than that the obligation to make delivery rests only with the delivering line, whether that line be a trunk line or switching carrier. If any allowance is to be made to industries for performing a part of the service which the delivering carrier is under legal obligation to perform such allowance should concern only the delivery carrier.

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Summary

Involved in this proceeding are approximately 200 industrial plants where spotting allowances are paid; and also numerous plants at which respondents assign locomotives

to perform spotting service beyond the points of inter-
[fol. 78] change. In either case a second placement of cars is made. Some of the latter plants require the full-time assignment of locomotives for their exclusive use, and the service is performed under the direction and control of the industry. Others require such service for shorter periods, in some cases amounting to several hours daily. Manifestly it is not the amount but the kind of service required which must be considered in determining whether the performance of such service is an obligation of the carrier under its line-haul rates.

This proceeding also involves many industries which perform their own service without the assumption by respondents of the costs of any operation beyond the points of interchange. Some of these have unsuccessfully sought allowances, or requested respondents to perform greater service, which has been refused. Others have made no application for allowance, or for greater service, due to the fact that the service of a locomotive not under its direction and control would be attended by extreme hazards to plant employees or property, and in some instances by the necessity for secrecy regarding manufacturing methods. Others do not desire the operation of respondents' locomotives within their plants because of interference with industrial operations, even though to perform the service themselves results in increased operating expenses. We believe it must be conceded that industries such as are described in this paragraph are often compelled through the payment of freight rates to bear transportation charges which are dissipated by certain respondents in payment for or performance of services which are in excess of such respondents' legal obligations. Payment of allowances by respondents amounted to more than $9,000,000 for the years 1927 to 1931, inclusive, but we have no means of estimating the expense to respondents for performing spotting service at industrial plants.

[fol. 79] While it is contended that discontinuance of payment of allowances, or performance by the carriers of service in lieu thereof, would induce the industries affected to use competitive means of transportation, such contention is unsupported by convincing evidence. It does not appear that the respondents which do not pay for or perform industrial spotting service have suffered to any greater extent from competitive forms of transportation than those carriers

which have indulged in such practices. We reach the conclusion that little if any traffic is being retained by respondents through the payment of such allowances, or the performance of spotting service.

It is likewise urged that the line-haul rates have been fixed to compensate the carriers for the performance of spotting service, but our consideration of the service as here involved leads us to a different conclusion. Many of the industries which now receive allowances or the performance by the carriers of the spotting service in lieu thereof, performed their own service without compensation or assistance for many years prior to the time they began

receiving aid from the carriers, and at the time the change was made, the line-haul rates were not altered. In such cases the carriers simply assumed a burden not previously borne.

This report deals only with traffic handled in interstate commerce and with Class I carriers. The principles announced, however, should be followed by all carriers subject to the Interstate Commerce Act. Section 15(13) of the act has been subjected to abuse. Many allowances of the kind herein considered were and are paid which were and are unwarranted.

When a carrier is prevented at its ordinary operating [fol. 80] convenience from reaching points of loading or unloading within a plant, without interruption or interference by the desires of an industry or the disabilities of its plant, such as the manner in which the industrial operations are conducted, the arrangement or condition of its tracks, weighing service, or similar circumstances, as set forth more specifically in rules 8, 9 and 10 of appendix A, the service beyond the point of interruption or interference is in excess of that performed in simple switching or team track delivery. Payment for, or assumption by the carrier of, the cost of service performed beyond such points of interruption or interference is found to be unlawful in violation of section 6 of the act.

Generally the payment of allowances for service, or the performance of such service without charge, to points within a plant which respondents are prevented, by the desires of an industry or the disabilities of its plant, from

reaching, without interruption or interference by the conditions mentioned in the preceding paragraph, provides the means by which the industry enjoys a preferential service not accorded to shippers generally. Such payment or performance dissipates respondents' funds and revenues, is not in conformity with efficient or economical management as contemplated by the Interstate Commerce Act, and not in the public interest.

MAHAFFIE, Commissioner, dissenting in part:

Much of the majority report is devoted to a discussion of legal principles with which I agree. It seems to me entirely clear that an allowace to an industry for spotting, which can not be done by the carrier on account of physical conditions, or which the industry is unwilling to allow the carrier to perform, is improper. N-t only does this seem clear but it is, I think, undisputed on this record.
[fol. 81] I do not agree, however, that the right of the carrier to perform terminal services is limited to what is termed "the equivalent of team-track spotting", nor that a tariff which provides for a terminal service in excess of what apparently is considered to be that minimum, is necessarily unlawful.

I think it likely that practices have developed in connection with both services and allowances that are wasteful and should be discontinued. Notwithstanding that fact,

however, a carrier has a certain discretion as to the terminal services it will perform in connection with the line-haul movement.

The carrier is under no obligations to charge for terminal services. Business interests may justify it in waiving any such charge, and it will be considered to have waived it unless it makes plain to both shipper and Commission that it is insisting upon it. (Interstate Commerce Commission v. Stickney, 215 U. S. 98, 105.)

Some carriers hold themselves out to perform store-door pick-up and delivery services on certain classes of traffic at no additional cost to the shipper. Tariffs providing for lighterage and elevation services, or allowances for such service performed by the shipper for the carrier, are not

considered improper. United States v. Baltimore & O. R. Co. (Arbuckle Case), 231 U. S. 274; Interstate Commerce Commission v. Diffenbaugh, 222 U. S. 42; Lighterage Cases, 203 I. C. C. 481.

In determining whether a practice is wasteful we should be in position to find that it has an adverse affect on the carrier's net income. No such finding can, I think, be made [fol. 82] as to the practices here held unlawful. Nor do I understand the majority so to find.

While it is concluded that allowances are wasteful and contrary to the public interest, the jurisdictional findings necessary to support that conclusion are not made. Nor does the majority find that the services for which allowances are made have not been considered in fixing the level of the line-haul rates. Chesapeake & Ohio Ry. Co. v. Westinghouse, Church, Kerr & Co., Inc., 270 U. S. 260-265. The record, on the contrary, is conclusive that they have been considered in many instances. It is equally conclusive that it is generally an economy to the carrier to make the allowance rather than to perform the service with its own forces. The act makes it the duty of the carrier to handle shipments offered from and to locations on private sidings. This necessarily involves placement of the car for loading and unloading. An industry track placement is as much the carrier's duty as placement on a team-track. Whether it is as "simple" is beside the point. The fact is that by reason of the volume of traffic and the lack of capital investment in the facility and expense in maintaining it, it usually is less expensive to the carrier to perform its terminal services on industry tracks than on its own team-tracks.

The general subject here under consideration is not new. It has been before the Commission and the courts many times. General Electric Co. v. New York Central & H. R. Co., 14 I. C. C. 237; Associated Shippers of Los Angeles v. Atchison, T. & S. F. Ry. Co., 18 I. C. C. 313; Car Spotting Charges, 34 I. C. C. 609; Interstate Commerce Commission v. Stickney, supra; Interstate Commerce Commission v. Diffenbaugh, supra; Atchison, T. & S. F. Ry. Co. v. United States, 232 U. S. 199; Los Angeles Switching Case, [fol. 83] 234 U. S. 294; New York Central & H. R. Co. v. General Electric Co., 219 N. Y. 227.

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In my judgment, there is no warrant in this record or in the cases relating to the subject for finding, as does the majority, that services rendered beyond "the equivalent of team-track spotting" are unlawful.

Commissioner Atchison did not participate in the disposition of this proceeding.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 84] Ex Parte No. 104, Part II—Sheet 36

APPENDIX A

Action of the Traffic Executive Association—Eastern Territory, at Meeting Held July 18, 1929

In view of the conditions under which arrangements for plant facility allowances have developed, it was the concensus (a) that such allowances should be limited to iron and steel industries and (b) should be on the 1915-1916 cost basis.

In the event that any departure from the foregoing is deemed advisable, the proposal with all the facts should be presented to the Traffic Executive Committee having jurisdiction, for review prior to any investigation of costs of approval or recommendation of the proposed arrangement.

Procedure for Consideration of Applications for Allowances and Rules for Determination of Allowances to Industries for Plant Facility Operation, Adopted by the Central Freight Association, Trunk Line Association and New England Freight Association.

(1) There shall be appointed a Special Standing Committee of not to exceed seven (7) members to be known as the C. F. A. Committee on Terminal Allowances and to be composed of members of the General Committee who shall act in person and not by proxy, except to another [fol. 85] member of the Committee, to whom shall be referred for investigation and recommendation, all applications for new allowances or for changes in allowances already made, it being understood that in Trunk Line territory, a Special Committee is not necessary inasmuch as the

matters referred to are handled by the Freight Traffic Managers Committee. It was understood that in Trunk Line Territory the Freight Traffic Managers Committee will act in the same manner as the special committee of the C. F. A.

(2) There shall be appointed an Accounting Committee to conduct cost studies of plant facility operations in the manner provided below. This Committee shall, in all cases, include local operating representatives of the roads serving the plant who, in co-operation with the Study Committee, shall determine whether the plant is properly, efficiently and economically operated.

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(3) These committees shall function as follows:

1. A plant desiring a plant facility allowance or a change in an existing allowance should present its application on prescribed form to the Railroad or Railroads with which it connects, such application to be supported by five (5) copies of blueprint or other diagram showing the complete layout of the plant and tracks.

2. If the Railroad or Railroads which receive the application desire to avail themselves of the services of the applicant and make an allowance therefor, it or they shall submit the application to the Chairman of the Association having jurisdiction with request that study be made. The chairman of the Central Freight Association will then [fol. 86] confer with the Chairman of the Committee on Terminal Allowances as to allowances in C. F. A. territory.

(a) If in their opinion the study should not be made a conference of the directly interested roads with the Committee on Terminal Allowances shall be held to consider the subject.

(b) If in their opinion or in the case of allowances in Trunk Line or New England Territory in the opinion of the General Committees a study should be made—

The Chairman of the Association in whose territory the study is to be made shall instruct the Accounting Committee, referred to in Section 2 hereof, to review the operation of the plant and decide if it conforms with good rail-

road practice or otherwise. If the operation is found to be improper or not according to good railroad practice, the Accounting Committee will confer with the applicant and suggest changes necessary to meet these requirements. If such requirements are not fulfilled no study shall then be made, but the Accounting Committee shall report its findings to the C. F. A. Committee on Terminal Allowances for review and recommendation to the General Committee in the case of C. F. A. and to the T. L. or N. E. Gen. Committees in the case of allowances in those territories. If in the opinion of the Accounting Committee the operation is proper it will proceed to make a study to determine the cost in the manner set forth in Rules 1 to 16 inclusive.

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(c) The Interstate Commerce Commission has held that switching services by a plant facility for account of a carrier must not exceed the equivalent of team track or simple switch placement. If no unusual or marked difficulty of operation in a plant is presented, the service may be considered not in excess of a simple switch.

If the plant requires some unusual complicated or expensive switching service in comparison with other plants of substantially the same type (but not necessarily of the same output) in the same vicinity, it shall be held that the service is in excess of a simple switch and no allowance shall be made.

(4) Upon receipt of the Accounting Committee's report, the Chairman of the Central Freight Association shall submit it to the Committee on Terminal Allowances for its review and recommendation. Upon receipt of the report and recommendation of the Committee on Terminal Allowances, the Chairman of the Central Freight Association shall present it to the General Committee for consideration. If approved it shall be referred to the Central Traffic Executive Committee for disposition. For Trunk Line and New England Territory, the report of the Accounting Committee will be submitted by the Chairman of the Trunk Line Freight Traffic Manager's Committee or the Chairman of the New England General Committee as the case may be, to said Committees respectively, for disposition.

[fol. 88] Rules for Determination of Allowances to Plant Facilities

Rule 1. To determine the amount to be paid by the Railroad to the plant for the terminal service performed, a study of the switching operations of the Plant shall be made and cost of all services thus obtained. The study shall be made jointly by authorized representatives of the Railroad and of the Plant for an agreed period of time, to be known as the "test period", during which period the operations must be typical or as nearly as possible of average normal operating and weather conditions.

Rule 2. The test period shall be sufficient to reflect representative average performance and expense. A minimum of seven (7) consecutive days should be taken with a preliminary educational period in which to instruct employees relative to the proper compilation of the field data. The data covering the preparatory period must not be used. If conditions are such that a test period of seven consecutive days is not representative of average or normal operating and weather conditions a period which shall be a multiple of seven days shall be studied.

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Rule 3. An accurate record shall be made, on Work Report Card Form TAS—1, per sample attached hereto, of the service performed by each locomotive. The detail of service by minutes and the number of loaded and empty cars handled shall be recorded thereon. The cards shall be compiled by representatives of the Railroad and of the Plant at the time the service is performed, according to Rule 10 (Sections 1 to 16 inclusive), hereof.

Rule 4. The proportion of the total time of locomotive service that is chargeable to the Railroad and the Plant [fol. 89] shall be obtained from an analysis of the work report cards according to Rules 10 (Section 1 to Section 20), 11, 12, 13, 14, and 15. The percentage of the total time chargeable to the Railroad as reflected by the analysis shall be applied to the total cost of the locomotive service, as provided for in Rule 16 hereof, to obtain the proportion of the expense chargeable to the Railroad.

Rule 5. The proportion of the expense chargeable to the Railroad as prescribed in Rule 4 shall be divided by the

total number of inbound and outbound loaded cars interchanged with the Railroad, during the test period to determine the amount per loaded car that may be allowed to the plant by the Railroad for terminal service performed. The number of loaded cars should be restricted to those physically interchanged by the locomotives during the test period.

Rule 6. The allowance to a plant for a terminal service shall be the .....e amount for each connecting Railroad and shall not exceed the amount it would cost the Railroad to perform the same service with its own locomotives, at its convenience, without interruption or interference. The cost of Railroad operation to be in each case determined from available data by the Study Committee.

Rule 7. The Plant shall receive from the Railroad on designated interchange tracks loaded or empty cars for placement at the Plant and shall deliver loaded or empty cars from the Plant on designated interchange tracks.

Rule 8. The service between point of interchange and point of loading or unloading, as the case may be, shall be charged to the Railroad, provided it is a progressive movement to point of placement or delivery, performed without plant interruption or interference. If Plant interruption or interference is encountered the service after such interruption or interference shall be charged to the Plant.

[fol. 90] Rule 9. The following is a partial list of what shall be considered as plant interruption or interference as referred to in Rule 8.

(a) Convenience of the Plant, such as service in excess of normal operation.

(b) Plant operations that interrupt or interfere with movements of switch locomotives.

(c) Holding of cars for advice from the Plant as to disposition.

(d) Weighing for account of Plant.

(e) Locomotive crane operation that interrupts or interferes with movements of switch locomotives.

(f) Operation of Plant locomotives while engaged in performing work solely for account of the Plant that interrupt or interfere with movements of switch locomotives. This will include such services as switching car repair shop tracks of the Plant, moving cars of material between locations within the Plant, disposal of material for the Plant, etc.

(g) Maintenance or construction work, where it interferes with economical switching operations.

(h) Crews waiting for instructions from the Plant.

Section 18 of Rule 10 reads in part as follows: "On cars weighed for information or account of the plant the scale is the point of interruption or interference."

[fol. 91] APPENDIX "B" TO PETITION

INTERSTATE COMMERCE COMMISSION

Inland Steel Company Terminal Allowance

Ex Parte No. 104

Practices of Carriers Affecting Operating Revenues or Expenses

Part II, Terminal Services

Submitted October 17, 1934. Decided July 11, 1935

Carrier's obligations under its interstate line-haul rates found not to extend beyond the present points of interchange, and payment of an allowance to the industry for services beyond such points found unlawful.

Same appearances as in the original report.

Nineteenth Supplemental Report of the Commission

Division 6, Commissioners McManamy, Lee, and Miller by Division 6:

In the original report in this proceeding, Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11,

certain principles were announced concerning the payment of allowances to industries heard on this record, for performing spotting service at their industrial plants, or the performance of such service by respondents in lieu of payment. This supplemental report pertains to an allowance paid by the Indiana Harbor Belt Railroad Company to the Inland Steel Company for spotting service performed by the latter company within its plant at Indiana Harbor, Ind. [fol. 92] This company produces a general line of iron and steel articles and coke by-products. The plant consists of two sections designated as plant No. 1 and plant No. 2. Construction of plant No. 1 was begun in 1901. It is bounded on the north by the main line of The New York

Central Railroad Company, and on the south by the main line of The Pennsylvania Railroad Company. Construction of plant No. 2 was begun in 1906. This plant is separated from plant No. 1 by the lines of the New York Central, The Baltimore and Ohio Railroad Company and the Elgin, Joliet and Eastern Railway Company, none of which has any connection with the plants. Both plants have been served exclusively since about 1906 by the Indiana Harbor Belt from its Michigan Avenue yards located slightly more than one mile from the steel company's property. Prior to 1906, plant No. 1 was served only by the Pennsylvania.

The inbound commodities at plant No. 1 consist principally of steam coal, scrap iron, spare parts, oil and occasional cars of acid, spelter, kegs, and grease. The outbound commodities are steel bars, plates, shapes, sheets, bolts, rivets, spikes and angles. The inbound commodities at plant No. 2 are principally by-product coal, scrap and oil. The outbound commodities consist of heavy structural steel, small rods, bars and rails, tie plates, angle bars, sulphate of ammonia, naphtha and creosote. The steel company has sufficient capacity to accommodate daily the inbound movement of about 350 cars, and about 125 cars outbound.

Each plant is served by an extensive system of railroad tracks which practically encircle the plants. Plant No. 1 has approximately 7 miles, while plant No. 2 has approximately 50 miles of tracks. The track systems of the two [fol. 93] plants are connected by two tunnels, one having

two standard-gage tracks and the other having three tracks arranged for standard and narrow-gage operation. All of the tracks within and between the two plants are owned by the steel company, except one outbound interchange track at plant No. 1, owned by the Indiana

Ex Parte No. 104, Part II, Supplement No. 19—Sheet 3

Harbor Belt. It is not shown how the trackage is divided into separate tracks or at how many places materials are loaded or unloaded within the plants. The steel company owns 22 standard-gage locomotives varying in size from 50 to 94 tons, 8 narrow-gage locomotives, and 499 freight cars. A large number of these cars are of special type, built to facilitate intraplant movement of materials according to industrial needs. The narrow-gage locomotives and cars are used exclusively for intraplant and industrial service.

Delivery and receipt of freight is made by the Indiana Harbor Belt on interchange tracks located within each of the two plants. Cars are usually placed on the interchange tracks in considerable numbers at one time; in many cases an entire train is delivered. Normally the number of cars handled to and from the plants is limited by the capacity of the locomotive. The cars are not classified according to their contents or point of final destination, before delivery within the plant. The classification and spotting of the cars, after delivery has been made by the Indiana Harbor Belt, is performed by the steel company's locomotives, for which service the steel company receives a flat allowance of $1.85 per loaded car. It is pointed out on brief that the volume of cars handled by the Indiana Harbor Belt results in a low cost per car handled.

For many years the Indiana Harbor Belt performed all [fol. 94] of the interchange switching at the two plants without extra charge. During much of this time the steel company's locomotive performed the intraplant switching. Both sets of locomotives worked under the direction of the industry's two yardmasters, one of whom was employed in each plant. There was a great volume of intraplant switching, and the total switching required the services of

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11 industrial locomotives each working three 8-hour shifts daily. The Indiana Harbor Belt had two 8-hour shifts in

plant No. 1 and three in plant No. 2. Because the switching was directed by an industrial yardmaster in each plant no serious difficulties were encountered. The business of the steel company was subject to fluctuations, and at times the Indiana Harbor Belt would be called upon to dispatch additional locomotives from its roundhouse seven or eight miles away, to perform the necessary spotting service. Many times, in order to eliminate delays or meet its industrial needs the steel company would use its own locomotives to perform this service, rather than depend on the carrier. The steel company decided that greater efficiency and therefore, a more flexible and satisfactory measure of switching service could be obtained if the work were unified and performed by the industrial locomotives. These facts constituted the reasons assigned on the record for the steel company's application to the Indiana Harbor Belt, in July, 1928, for an allowance.

A cost study was conducted in November, 1928, which, based on 1916 costs, developed a cost per car of $1.12, and on 1928 factors, $1.98 per car. As the result of bargaining by the steel company and respondent, an allowance of $1.85 per loaded car, (the same as paid to a number of other industries of various kinds in the Chicago industrial area) was granted, effective October 25, 1930. Witness for the [fol. 95] industry testified that while the allowance granted was unsatisfactory, it was "felt that something less than the amount shown by the cost study would possibly be justified, as the industry hoped to gain some additional efficiency as a result of more concentrated operation than was possible when the railroads were in the plant."

Ex Parte No. 104, Part II, Supplement No. 19—Sheet 5

The record is conclusive that the service beyond the interchange tracks must be accommodated to the needs of the steel company, cannot be performed to conform with transportation operations which respondents can reasonably be required to perform, and is clearly in excess of the equivalent of team-track or simple-switch placement. Respondent is under no legal obligation to spot cars solely at the convenience of the steel company. Pittsburgh Forge & Iron Co. v. Director General, 59 I. C. C. 29; United States Cast Iron P. & F. Co. v. Director General, 57 I. C. C. 442; Stewart Furnace Co. v. Pennsylvania R. Co., 68 I. C. C. 528. The respondents are therefore paying an allowance for service

for which they are not compensated under the line-haul rates. Propriety of Operating Practices—Terminal Services, supra.

We find that the respective interchange tracks as described of record are reasonably convenient points for the delivery and receipt of carload freight; that the transportation service for which the respondent carrier is compensated in its line-haul rates begins and ends at said interchange tracks; that the service performed by the Inland Steel Company beyond those points is a plant service; and that by payment of an allowance to the Inland Steel Company for service performed beyond the interchange tracks on interstate shipments, respondent carrier provides the means by which the industry enjoys a preferential service [fol. 96] not accorded to shippers generally, and refunds or remits a portion of the rates or charges collected or received as compensation for the transportation of property, in violation of section 6 (7) of the act.

An appropriate order will be entered.

Order

At a Session of the Interstate Commerce Commission, Division 6, held at its office in Washington, D. C., on the 11th day of July, A. D. 1935.

Inland Steel Company Terminal Allowance

Ex Parte No. 104

Practices of Carriers Affecting Operating Revenues or Expenses

Part II, Terminal Services

Upon further consideration of the record in this proceeding concerning the lawfulness and propriety of the allowance paid by the Indiana Harbor Belt Railroad Company to the Inland Steel Company for the performance by the latter of spotting service within its plant at Indiana Harbor, Ind., and the Commission having under date of May 14, 1935, made and filed a report, Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, containing its legal conclusions with respect to the general situation presented, and the division having on the date hereof made and filed a supplemental report containing its findings of fact and conclusions with respect to the allowance paid

to the Inland Steel Company, which reports are hereby referred to and made a part hereof, and the division having found in said supplemental report that by the payment of said allowances the Indiana Harbor Belt Railroad Company [fols. 97-98] violates the Interstate Commerce Act as set forth in the above-mentioned reports:

It is ordered, That the Indiana Harbor Belt Railroad Company be, and it is hereby, notified and required to cease and desist on or before September 3, 1935, and thereafter to abstain from such unlawful practice.

By the Commission, Division 6.

George B. McGinty, Secretary. (Seal.)

[fol. 99] IN UNITED STATES DISTRICT COURT

SUBPOENA—Filed August 21, 1935

The President of the United States of America to Indiana Harbor Belt Railroad Company, Greeting:

We Commend You and Every of You, That you be and appear before our Judges of our District Court of the United States of America, for the Northern District of Illinois, at Chicago, in the Eastern Division of said District, on or before the twentieth day after service of this writ, exclusive of the day of service, to answer or otherwise defend against a certain bill in equity heretofore filed by Inland Steel Company, in the Clerk's office of said Court, in the City of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Northern District of Illinois to Execute.

Witness the Honorable James H. Wilkerson, Judge of the District Court of the United States of America, for the Northern District of Illinois, at Chicago aforesaid, this 15 day of August, in the year of our Lord One Thousand Nine Hundred and Thirty-five and of our Independence the 160th year.

Henry W. Freeman, Clerk. (Seal.)

Memorandum

The defendant is required to file its answer or other defense in the Clerk's office on or before the twentieth day after service hereof upon it, excluding the day of service; otherwise the said bill may be taken pro confesso.

Henry W. Freeman, Clerk.

[fols. 100-101] Served this writ on the within named Indiana Harbor Belt Railroad Company, a corporation, by delivering a copy thereof to L. T. Day atty. and agent of said corporation this 16 day of Aug., 1935. The president of said Corporation not found in my district; also tendered a copy of petition which he accepted.

Wm. H. McDonnell, U. S. Marshal, by E. Glaser, Deputy.

Marshal's fees:

1 Services	$2.00
1 Mile	.06
	$2.06

[File endorsement omitted.]

[fol. 102] In United States District Court

In Equity. No. 14738

[Title omitted]

Intervention of Interstate Commerce Commission—Filed August 23, 1935

To the Honorable the Judges of Said Court:

In accordance with the provisions of Section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, Sup. VII, title 28, sec. 45a), we hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of ourselves, as its counsel, in the above-entitled cause.

Interstate Commerce Commission, Daniel W. Knowlton, Chief Counsel; Nelson Thomas, Attorney.

[fol. 103] IN UNITED STATES DISTRICT COURT

In Equity. No. 14738

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed August 23, 1935

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioner's petition contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I and II of the petition, the Commission, for the purposes of this suit, admits that the allegations therein contained are true.

II

Answering paragraphs III to XII, inclusive, of the petition, the Commission admits and alleges that it made the original report dated May 14, 1935, referred to in paragraph IV of the petition, and the Nineteenth Supplemental Report and order dated July 11, 1935, referred to in said paragraph IV, said order being mentioned also in paragraph III of the petition, copies of which, respectively, are attached to [fol. 104] the petition as Appendix A and Appendix B, in a proceeding then pending before the Commission and entitled Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, which proceeding was instituted by the Commission on its own motion, for the purpose, among others, of determining whether certain practices of what are referred to in said original report as Class I carriers, relating to the terminal services and affecting the operating revenues and expenses, of said carriers, were in violation of the Interstate Commerce Act; and the Commission respectfully refers the Court to the text of said reports and order for more full and complete information in the premises.

The Commission further alleges that in said proceeding the parties thereto, including the petitioner herein, were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence bearing upon the matters covered in and by said appendixes was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of petitioner herein, by the counsel of said parties; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by petitioner in this suit, whereupon the Commission determined said matters and entered and duly served upon the petitioner herein, and upon other interested parties, its said reports and order; that said reports and order included the Commission's findings of fact, decision, conclusions, order and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said reports and order are based.

[fol. 105] The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said reports it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the petition herein.

The Commission further alleges that said order of July 11, 1935, was not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said petition.

Further and more particularly answering paragraph XI of the petition, the Commission denies each of and all the allegations therein contained.

The Commission specifically denies that, as alleged in paragraph XII of the petition, petitioner will suffer irreparable loss and injury, unless said order of July 11, 1935, is set aside and the respondent railroad company is required to withdraw the canceling tariff mentioned in said paragraph XII.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition, in so far as they conflict either with the allegations herein, or with either the statements or conclusions [fol. 106] of fact included in said original report of May 14, 1935, and in said Nineteenth Supplemental Report and order of July 11, 1935, which reports and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

Interstate Commerce Commission, by Nelson Thomas, Attorney. Daniel W. Knowlton, Chief Counsel, of Counsel.

[fols. 107-108] *Duly sworn to by Balthasar H. Meyer. Jurat omitted in printing.*

[fol. 109] IN UNITED STATES DISTRICT COURT

In Equity. No. 14738

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA—Filed August 28, 1935

United States, one of the above defendants, for answer to the Petition filed herein against it says:

I

United States admits that the facts alleged in paragraphs numbered I, II, III and IV of the Petition are true, except that United States denies that the suit is maintainable under the general equity jurisdiction of this court as asserted in said paragraph III.

II

United States denies the matters, things and conclusions alleged in paragraph V of the Petition, except that it admits

that it is the duty of railroad common carriers under their line-haul rates to perform reasonable terminal and switching service to effect the receipt and delivery of carload freight, but United States denies that said carriers, including the defendant Indiana Harbor Belt Railroad Company, may lawfully perform, without charge in addition to their line-haul rates, the service of switching and spotting cars within the private grounds and plant of petitioner and further denies that they may lawfully pay an allowance out of said line-haul rates to petitioner for performing said service; and United States further denies that said service [fol. 110] is a transportation service within the meaning of the Interstate Commerce Act, but alleges that it is a plant service as found by the Commission in its reports annexed as Appendices A and B to the Petition.

III

United States denies the allegations contained in paragraph VI of the Petition.

IV

Answering paragraph VII of the Petition, United States admits that for several years petitioner has performed, with its own facilities, the switching, moving and spotting of cars between points within its private grounds and plant for loading and unloading, and that it has received from said Indiana Harbor Belt Railroad Company and allowance of $1.85 per car since October 25, 1930; but United States denies the remaining allegations of said paragraph VII and particularly denies that said switching and spotting service so performed by petitioner is a transportation service within the meaning of the Interstate Commerce Act.

V

Answering paragraph VIII of the Petition, United States admits that defendant Indiana Harbor Belt Railroad Company has published the tariffs set forth and described in said paragraph but denies that the first of said tariffs so described makes it lawful for said railroad company either to render switching and spotting services or to pay to petitioner the allowance therein provided. Further answering said paragraph VIII, United States disclaims any knowledge as to whether said railroad company would have cancelled said allowances but for the order of the Interstate

Commerce Commission issued July 11, 1935; and United States alleges in this connection that had said railroad company not elected to comply with the Commission's said order it could have sued in its own behalf in this court to enjoin the order under statute especially providing for such suit, but that it has not exercised that right.

[fol. 111]

VI

Answering paragraph X of the Petition, United States admits as therein alleged, that representatives of both the petitioner and said Indiana Harbor Belt Railroad Company appeared pursuant to notice and presented their testimony at hearings conducted by the Interstate Commerce Commission concerning the payment to petitioner of said allowance; but United States says that the remaining allegations of said paragraph X are argumentative and conclusory and therefore require no answer.

VII

United States denies the allegations contained in paragraph XI of the Petition and the several subdivisions thereof and denies that the Commission's said order of July 11, 1935, is unlawful or void for the reasons therein alleged or for any other reason.

VIII

United States denies the allegations of paragraph XII of the Petition and particularly denies that petitioner will suffer irreparable loss and injury unless said order of the Commission is enjoined; and United States alleges in this connection that even though petitioner be prevented by said order from receiving said allowances pending final determination of this suit, it has adequate and complete remedies at law and in equity to recover such amount, if any, which may be lawfully due it if said order of the Commission be finally held unlawful.

IX

Except as herein expressly admitted, United States denies each and every allegation contained in the Petition and in the several paragraphs and subdivisions thereof.

Wherefore, having fully answered the Petition, the United States prays that the relief therein prayed be denied and that the Petition be dismissed with costs to the Petitioner,

and that it have the benefit of such other and further orders, decrees or relief as may be just and proper.

Elmer B. Collins, Special Ass't to the Attorney General. John Dickinson, Assistant Atty. General. Michael L. Igoe, United States Attorney.

[fols. 112-113] District of Columbia, ss:

Elmer B. Collins, being duly sworn, deposes and says that he is a Special Assistant to the Attorney General of the United States, duly appointed and qualified; that he has read the foregoing Answer and knows the contents thereof; and that the same is true of his own knowledge except as to the matters therein stated to be on his information and belief, and as to those matters he believes them to be true.

(Signed) Elmer B. Collins, Special Assistant to the Attorney General.

Subscribed in my present and sworn to before me this 23rd day of August, 1935. Dorothy Jost, Notary Public. (Seal.)

[fol. 114] In United States District Court

In Equity. No. 14738

[Title omitted]

Interlocutory Injunction—August 28, 1935

The plaintiff having heretofore filed its Bill of Complaint praying for a permanent injunction against the United States of America and each of the other respondents, individually and collectively, against the enforcement, operation and execution of a certain report and order made and entered by the Interstate Commerce Commission, on the 11th day of July, 1935, in certain proceedings known and entitled as Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, the said order being effective on the 3rd day of September, 1935, and praying certain other relief as set forth in the bill; and upon motion of plaintiff for such interlocutory injunction pending the final order of the court herein;

And the Honorable James H. Wilkerson, Judge of the District Court of the United States for the Northern District of Illinois, pursuant to Section 47 of the United States Code, having called to his assistance to hear and determine said application for said interlocutory injunction, two other judges, namely, Honorable George T. Page, United States Circuit Judge and Honorable Walter C. Lindley, United States District Judge;

And it appearing that five days' notice of hearing by this court on such application for interlocutory injunction, to be held on Wednesday, the 28th day of August, 1935, was given to the above named respondents, to the Attorney General of the United States and to the Interstate Com-
[fol. 115] merce Commission;

It further appearing from the Bill of Complaint that defendant, Indiana Harbor Belt Railroad Company, has filed a certain tariff schedule, to become effective September 3, 1935, in compliance with the aforesaid order of the Commission, whereby said defendant will cancel the allowance which has been paid plaintiff for several years last past as compensation for transportation services under paragraph (13) of Section 15 of the Interstate Commerce Act; and that the effective date of such cancelling tariff should be suspended pending the outcome of the matters in controversy in this proceeding;

And the court having jurisdiction of the parties hereto, and of the subject matter, and being fully advised in the premises, and upon hearing;

Now, therefore, it is ordered that during the pendency of this matter the United States of America and the Interstate Commerce Commission be and they are hereby restrained and enjoined from taking any steps for the enforcement and execution of the aforesaid report and order entered the 11th day of July, 1935, in said Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, in so far as the same apply to petitioner, Inland Steel Company, and the said report and order are suspended, stayed, and set aside, pending the further order of the court;

It is further ordered that the operation of the aforesaid tariff schedule filed by defendant, Indiana Harbor Belt Railroad Company, to become effective September 3, 1935, cancelling the aforesaid allowance to plaintiff be,

and it is hereby, suspended and set aside, pending the further order of this Court.

It is further ordered, that until the further order of the Court, any and all sums due and payable to plaintiff, under the aforesaid tariff providing said allowance, shall be set up by defendant Indiana Harbor Belt Railroad Company on its books of account, which sums so set up shall be paid over to plaintiff, or canceled, only upon the further [116-122] order of this Court, plaintiff by its counsel having agreed in open court to such arrangement, without prejudice.

By the Court.

George T. Page, Circuit Judge. James H. Wilkerson, District Judge. Walter C. Lindley, District Judge.

August 28, 1935.

[fol. 123] In United States District Court

Order of I. C. C.—Filed April 18, 1938

[fols. 124-125] Order

At a Session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 26th day of February, A. D., 1937

Chicago By-Product Coke Company Terminal Allowances

Ex Parte No. 104

Practices of Carriers Affecting Operating Revenues or Expenses

Part II, Terminal Services

Upon further consideration of the record in the above-entitled proceeding, and good cause appearing therefor:

It is ordered, That the effective date of the order attached to the fifty-sixth supplemental report therein be, and it is hereby, postponed to June 15, 1937.

It is further ordered, That the said order shall in all other respects remain in full force and effect.

By the Commission, Division 3.

George W. Laird, Acting Secretary. (Seal.)

[fol. 126] IN UNITED STATES DISTRICT COURT

In Equity. Nos. 14738, 14777, 15240, 15309, 15355, 14905

[Title omitted]

Before Sparks, Circuit Judge, and Wilkerson and Lindley, District Judges

LINDLEY, District Judge:

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed April 27, 1938

These five cases were consolidated for hearing, as the issue in each is substantially the same. The suits are of the precise character of those considered in United States et al. v. American Sheet & Tin Plate Co., et al., 301 U. S. 402, wherein the court reversed an injunctional order entered at the suit of certain industrial corporations against the enforcement of an order of the Interstate Commerce Commission, which had its basis in Ex Parte No. 104 investigation of the Interstate Commerce Commission and certain supplementary proceedings as to each industry. In view of the determination in the case cited, the only question presented here is whether the specific facts existing with reference to each of the several industries here involved bring these cases within the rules announced by the Supreme Court. The findings of the Commission in the cases here involved were substantially the same as those considered by the Supreme Court. In that case the court found that there was substantial evidence to support the findings. Here the plaintiffs contend that substantial support of the Commission's findings is lacking and that the evidence is not such as to support the orders entered. Consequently it has devolved upon us to examine the evidence as to each plaintiff.

[fol. 127] (1) Inland Steel Company: From the supplementary proceedings as to the Inland Steel Company it appears that the company manufactures a general line of iron and steel products and coke by-products. Its property is in two sections, Plant No. 1 and Plant No. 2. No. 1 is bounded on the north by the New York Central Railroad and on the south by the Pennsylvania. The plants are separated by the

lines of the New York Central, The Baltimore and Ohio and the Elgin, Joliet and Eastern. Both plants have been served since 1906 solely by the Indiana Harbor Belt from its Michigan Avenue Yards located slightly more than one mile from the steel company's property.

The inbound commodities at Plant No. 1 consist principally of coal, scrap iron, parts, oil, acid, spelter, kegs and grease; the outbound commodities of steel bars, plates, shapes, sheets, bolts, rivets, spikes and angles. The inbound commodities at Plant No. 2 are principally coal, scrap and oil and the outbound commodities structural steel, rods, bars and rails, tie plates, angle bars, sulphate of ammonia, naphtha and creosote. The company accommodates daily some 350 inbound cars and some 125 outbound cars.

Each plant is served by an extensive system of railroad tracks, there being approximately fifty miles of track within the plants. The steel company owns 22 standard-gage locomotives, 8 narrow-gage locomotives and 499 freight cars, a number of which are of special type, built to facilitate intraplant movement of materials responsive to industrial needs. The narrow-gage equipment is used exclusively for intraplant and industrial service. Formerly the Indiana Harbor did the switching but the exigencies of the industry were such that it was deemed advisable that the steel company use its own locomotives and perform the service rather than depend upon the carrier.

The Indiana Harbor Belt delivers and receives freight on the interchange tracks located within each of the plants, sometimes as much as an entire train being placed on the [fol. 128] interchange tracks at one time. The cars are not classified according to their contents or final destination before delivery within the plant. After delivery on the interchange tracks, classification and spotting of the cars is performed by the steel company's locomotives, for which it receives from the carriers $1.85 per loaded car. The services beyond the interchange tracks must be accommodated to the needs of the steel company; they cannot be performed in conformity with transportation operations which the railroad company can reasonably be required to perform and are in excess of team track or simple switch placement.

The respective interchange tracks are reasonably convenient points for the delivery and receipt of carload freight. The transportation service for which the carrier is compensated in its line-haul rates begins and ends at these tracks.

The service performed by the Inland Steel Company beyond those points is a plant service which the carrier is not bound to perform and for which it is not compensated.

We find substantial evidence to support these findings in the record, Vol. 5, pp. 4486, 4492 to 4493; Vol. 4 of Exhibits p. 293, R. 7747; Vol. 7, p. 7632 to 7659.

(2) Interlake Iron Corporation: The Duluth plant of this corporation was formerly owned and operated by the Zenith Furnace Company; it was purchased by the present owner in 1930 and is now known as the Zenith division of the iron corporation. It produces pig iron, coke and coke-oven by-products and sells coal at wholesale. Its principal inbound commodities are iron ore, scrap, acid and calcium chlorine. Its principal outbound shipments consist of coal, pig iron, coke and its by-products and under normal business conditions average about 2500 cars per month.

In the northern section of the plant are a pig iron storage yard, blast furnace, cast house and other necessary buildings used in producing pig iron, as well as a power plant, consisting of a large boiler house and engine room, ore storage yards and an ore-thawing plant used during the winter [fol. 129] season and a large ore unloading and storage trestle. In the central portion of the plant is the coke and by-products plant, which consists of a large battery of ovens and numerous buildings and tanks used in the production of coke and in handling and shipping the by-products. West of the coke ovens is a storage gas container of the capacity of 1,000,000 cubic feet. East of the ovens and near the plant boundary is ground used for the storage of coke. The south portion of the plant, which adjoins the coke by-products works, contains a coal dock about 2000 feet long, served by a boat slip. Adjoining this dock and paralleling it is a coal-storage yard about 375 feet wide with a capacity of 500,000 tons.

All portions of the plant are served by industrial tracks, consisting of ten miles of standard-gage trackage, divided into approximately forty-five separate tracks, and a small amount of narrow-gage track. North of the plant is the mail line of the Northern Pacific. The carrier delivers and receives cars on interchange tracks which it owns, located outside of the plant immediately adjacent to the northwest corner of the industrial property. Two tracks scales, owned by the corporation, are located within the plant near the

interchange yards and all cars handled at the plant are weighed, empty and loaded. Between the interchange tracks and the numerous points of loading or unloading scattered throughout the plant, the cars are handled by locomotives owned by the industry, and for the switching or spotting service by the company an allowance is paid by the carrier. A considerable amount of switching service within the plant is performed by locomotive cranes.

The allowance to the Zenith Company was first made by an agreement between that company and the carrier on October 2, 1903. The agreement recited that inasmuch as the business of the furnace company had so increased that it required a large part of the time of an engine and crew to [fol. 130] perform the handling and switching of cars and inasmuch as the iron company was willing to handle the switching upon receiving proper compensation, the carrier agreed to construct a suitable interchange track and to pay the industry $1 per loaded car for cars handled by it on which it received the line-haul revenue. In 1921 the allowance was increased to $1.50 per car, and this allowance has continued to the iron corporation since its acquisition of the plant and applies to loaded cars handled by the carrier under switching charges as well as those on which the carrier receives line-haul revenue.

The plant has been enlarged since 1903 when the allowance first became effective and it has become even more impractical than it was then to operate the carrier's locomotives therein. Under business conditions such as prevailed in 1930 the spotting of cars by the carrier at the loading or unloading points within the plant would require 2½ eight-hour locomotive tracks for each twenty-four-hour period as well as additional yard masters, enginehouse men, yard-checkers and messengers. Even then the industry would have to continue to use its locomotives and cranes for performing interplant switching.

Among the necessary plant operations during times of normal business are the selection of cars containing blast furnace materials such as ore, coke and scrap iron and the movement of those cars in specified volumes and proper order to facilitate the production of pig iron. During the summer season cars containing ore are handled from the interchange tracks, weighed and moved to an ore trestle, where the contents are dumped and delivered by mechanical

means to the blasting furnace. In the winter season, when the ore is frozen, it is necessary to move cars into heated buildings of which there are six, each having a capacity of seven cars, where the ore is thawed. It is then moved for storage or to the trestle for dumping.

Much coal comes in by both the coal dock and storage yard. The extreme end of the coal dock is about one and one-half miles from the interchange track. Four industrial railroad tracks, each with a capacity of about thirty cars, [fol. 131] serve this yard. The dock, yard and tracks are served by a traveling coal-handling bridge with traveling coal-screening plant which unloads coal from boats to the storage yard, or into cars or from the storage yard into cars. Outbound cars are loaded at any point on the track which parallel the coal yard and then moved to the scales, weighed and from this point moved to the interchange tracks. The distance between the coal-storage yard and the interchange tracks ranges from 1600 to 3100 feet. Other outbound commodities are moved from the coke plant or by-products plant or from the blast furnace or other loading points within the property, being weighed en route. These movements average from ¼ to ½ mile in length.

Because of intraplant movement, performed by the iron company's locomotive cranes and switching engines, considerable interference with the industrial operation would result if the carrier attempted to perform the spotting service within the plant. The movements described, all of which take place beyond the interchange tracks, located closely adjacent to the scales and plant entrance, are clearly a part of the industrial operation and not a part of the transportation service which a carrier is obligated to perform under line-haul rates. The carrier is prevented by the manner in which the industrial operations are conducted from performing service beyond the interchange tracks.

The line-haul rates cover the delivery and receipt of shipments at a reasonable convenient point, which, in the present instance, is the interchange tracks, and the transportation service of the carrier begins and ends at these tracks. The movements by the iron corporation between the interchange tracks and points within the plant are industrial services which it is not the duty of the carrier to perform.

The evidence supports these findings and conclusions. See pages 6837 to 6879 inclusive and Exhibit B-28.

[fol. 132] (3) Crane Co: This company's property in Chicago covers approximately 150 acres of land wherein are manufactured plumbing and steam fitting supplies, pipes and valves. Eight miles of track, comprising about forty separate tracks, are located within the plant. The industry owns one locomotive, which is used principally for intraplant switching. The various carriers deliver and receive traffic on nine interchange tracks which have a capacity of eighty-five cars, and service to and from these tracks is made over one lead track. The principal inbound commodities are scrap and pig iron, fluorspar and brick. Cars containing these materials, after being placed on the designated interchange tracks, are moved by the locomotive to a track scale where they are weighed, in order to afford the industry an accurate record of its stock and materials, and then moved to another series of tracks at another corner of the plant, during day-light hours. At night, after operation the plant has suspended, an engine and crew of one of the carriers, referred to as the switching company, on behalf of all the carriers, performs the necessary classification and switching of the cars from the second series of tracks referred to, to numerous points of loading or unloading located in various parts of the plant. It is impractical to perform this switching during working hours, due to industrial operations and consequent hazards. The switching company's locomotives, in some instances remove loaded cars from the point of loading to the outbound tracks, but that work is usually performed by the plant locomotive. The expense to the switching company in performing the service is prorated on an engine-hour basis among the carriers for which the service is performed. Under normal conditions the switching service performed by the switching company requires about seven hours daily. As many as forty loaded cars have been shipped from the plant in one day.

The service performed beyond the interchange tracks is an industrial service which the carriers are not obligated to perform and for which they are not compensated under their line-haul rates.

Substantial evidence in support of these findings and conclusions is found in the record at pp. 3797 to 3827; 4497 to 4502; 8499 to 8505, 8513 to 8524; 8477 to 8498.

[fol. 133] (4) American Steel Foundries: This company operates at Indiana Harbor, manufacturing steel castings and railroad specialties. The plant, consisting of buildings and material yards, is served by two miles of standard-gage railroad track. There are twenty-three separate tracks within the plant and the company maintains a locomotive primarily for moving cars in intraplant service between the various parts of the plant. The Indiana Harbor Belt Railroad delivers and receives cars on interchange tracks located on the carrier's property, paralleling one side of the plant. The E. J. & E. delivers and receives cars on interchange tracks paralleling another side. Inbound traffic of from eight to ten cars daily consists principally of scrap and pig iron, ore, sand, coal and clay; outbound commodities of the manufactured products. The cars containing the inbound and outbound commodities are moved by the company's locomotive between the interchange yards and the points of unloading or loading, of which there are about thirty. For such service an allowance of $1.85 per loaded car has been paid by the carriers since 1921.

Formerly the interchange service was performed by the carriers. In 1916 the industry acquired its locomotive and began performing all of the switching. Approximately fifty per cent of the locomotive time at the plant is consumed in the performance of intraplant switching and movements of this nature are not performed by the carriers except at a switching charge. It appears, therefore, that the industry was able through the operation of its own locomotive to have its intraplant switching performed at times and in a manner to suit its industrial convenience and at the same time avoid the carriers' switching charges for intraplant switching.

In performing spotting service the industry's locomotive moves the cars between the interchange tracks and the points of loading and unloading within the plant at such times and in such manner as will best facilitate the industrial operations. As many movements are made daily as the industrial operations require. Such service is industrial service not within a carrier's obligation to render for shippers. The industry, by performing the spotting service for which it is reimbursed by the carriers through payment of the allowance, has the advantage of a superior

switching service as compared with industries which are provided with only the normal service rendered by carriers. [fol. 134] The existing line-haul rates of the carriers must be construed to cover delivery and receipt of shipments at a reasonably convenient point. The interchange tracks constitute such a reasonable point, and transportation service which it is the duty of the carriers to perform begins and ends at these tracks. The movements beyond those tracks constitute industrial services, which it is not the duty of the carriers to perform under the line-haul rates.

Substantial evidence supporting these findings and conclusions appears in the record pp. 7592 to 7609; 7610 to 7615; 7617; 4499 to 4507.

(5) Chicago By-Products Coke Company: This industry produces at its plant at Hawthorne near Chicago gas, coke and by-products, such as sulphate of ammonia and tar. Its plant covers an area approximately 2200 feet wide and 3200 feet long; wherein are located a machine shop, boiler house, generator house, a by-product building, three coke oven batteries and the facilities necessary for storing and handling large quantities of coal and coke. The buildings and facilities are served by a network of some thirty-five tracks extending throughout the plant and having a capacity of approximately 800 cars. Approximately 30,000 cars are handled at the industry annually, about 60 per cent being inbound and 40 per cent outbound. There are two principal loading points for coke, two for tar and one for ammonia sulphate and one each for acid, lime, oxide and miscellaneous stores. Inbound and outbound shipments are delivered or received by carriers on seven parallel interchange tracks, mostly within the industrial property.

The industry with its own power moves the cars between the interchange tracks and loading and unloading points located on tracks within the plant. Approximately sixty per cent of the total engine-hour time is devoted to interchange switching and forty per cent to intraplant switching. The plant operates twenty-four hours a day and as many locomotives are kept in service as the industrial needs require. It would be impossible to operate the plant in an efficient manner if the switching were performed by railroad crews and locomotives. Plant operations are carried on in such a way that the plant locomotives, being

[fol. 135] under the industry's supervision, can perform the spotting service more efficiently and at less expense than the railroads can perform it and it is possible for the crews of the plant locomotives to perform spotting with less interference than if a carrier crew should perform it.

The loading and unloading points are within the plant. Some of them could be reached directly from the carrier tracks, but the greater part of them may be reached only by the movements heretofore described. The spotting of cars at the track hopper is done by an electric car puller, which can handle only one car at a time. The industry produces a large amount of gas and must be prepared at all times to meet the demands of the public. A locomotive must be available to move cars between the interchange yards and the track hopper at such times and in such numbers as the industrial needs require.

For the spotting service thus rendered the industry receives from the carrier a maximum allowance of $1.85 per loaded car. The track layout is unusually complex as compared with ordinary team tracks or industrial tracks upon which carriers ordinarily perform switching. The amount of spotting service required by the industry and the manner in which it must be performed is in excess of that which carriers are obligated to render under their line-haul rates. Those rates must be construed to cover delivery and receipt of shipments at reasonably convenient points. The transportation service which it is the duty of the carriers to perform begins and ends at the interchange tracks and the movements beyond those tracks are industrial services.

Substantial evidence supporting these findings and conclusions appear in the record at pp. 3740 to 3750; 8237 to 8268; 8275 to 8290.

(6) Acme Steel Company: This company's plant, located at Riverdale near Chicago, Illinois, lies near the Illinois Central and Pennsylvania Railroad tracks. The Pennsylvania may handle incoming and outgoing freight directly, but the Illinois Central must use the trackage of the Pennsylvania.

[fol. 136] The plant has been operating since 1919 and was enlarged in 1929. On it are located eleven tracks of the total mileage of 4.7 miles, serving seven loading and five unloading points where freight cars are spotted. The chief article of manufacture is strip steel and the principal commodities

handled are steel, coal and acid. Inbound and outbound shipments average 450 carloads monthly. The two carriers performed the necessary spotting service until 1925 when the steel company purchased two locomotives and elected to perform the service, provided it was paid an allowance. Since that time cars have been received and delivered by carriers on interchange tracks located within the plant and the two plant locomotives are then used alternately in performing the spotting and intraplant switching. The company also owns and operates two locomotive cranes used principally for the unloading of cars containing coal. The carriers pay to the steel company an allowance of $1 per loaded car for this spotting service.

Certain tracks within the plant on which cars are unloaded or loaded do not have capacity to accommodate at one time cars used in the daily operations. This requires in many cases that cars on such tracks be switched as soon as they are loaded or unloaded and that other cars which have been held on the interchange or storage tracks be placed for like purposes. If the Pennsylvania were called upon to do this switching, the assignment of an additional locomotive would be necessary, due to the services required in the new enlarged plant. Some of the outbound cars are loaded with different kinds of steel produced at different points, and this fact necessitates movement of such cars to and from those units for partial loading.

It appears clearly that the services rendered beyond the interchange cars is necessitated by the industrial requirements and is in excess of the carrier's obligation under its direct line-haul rates. The existing rates of the carriers must be construed to cover the delivery and receipt of shipments at a reasonably convenient point. The interchange tracks constitute such a reasonable point. The transportation services which it is the duty of the carriers to perform begin and end at the interchange tracks, and the movement required by the steel company between these tracks and points of loading and unloading are industrial services [fol. 137] which it is not the duty of the carriers to perform.

Pertinent evidence in the record, at pages 3740-3761; 7524-7531; 7577-7592; 7578-7592, gives substantial support to these findings and conclusions.

The facts in each of these cases are such that the decision of the issues involved is controlled by United States v.

American Sheet & Tin Plate Company, 301 U. S. 402. There the court said:

"The Commission properly held that each case must be decided upon the circumstances disclosed. It accordingly examined the evidence respecting the operations at the plant of each of the appellees and made its findings with respect to each upon the evidence in the record. We find it unnecessary to detail that evidence since it is summarized in the Commission's reports. It is sufficient now to say that in every case the Commission found, upon sufficient evidence, that the cars were, in the first instance, placed upon lead tracks, interchange tracks or sidings and subsequently spotted from these tracks; in each instance the spotting service involved one or more operations in addition to the placing of the car on interchange tracks, such as moving it to plant scales for weighing, or some additional burden, such as conformance to the convenience of the plant, supply of special motive power required by the plant's layout or trackage or some other element which called for excessive service greater than that involved in team track spotting or spotting on an ordinary industrial siding or spur. We are unable to say that the findings in respect of the individual plants lacked support in the evidence. We are, therefore, bound to accept them and to hold the orders lawful."

The court further said:

"The Commission is clearly empowered to determine what is embraced within the service of transportation and what lies outside that service. Since the Commission finds that the carriers' service of transportation is complete upon delivery to the industries' interchange tracks, and that spotting within the plants is not included in the service for which the line-haul rates were fixed, there is power to enjoin the performance of that additional service or the making of an allowance to the industry which performs it. * * * The Commission has, in each case, found that the interchange tracks of the respective industries are reasonably convenient points for the receipt and delivery of interstate shipments and that the industry performs no service beyond those points of interchange for which the carrier is compensated under its interstate line-haul rates. These findings are an adjudication by the Commission that the spotting

service within the appellees' plants is not transportation service which the carriers are bound to render in respect of receipt and delivery of freight. The statute contains this definition: 'The term "transportation" shall include * * * all services in connection with the receipt, delivery, elevation, and transfer in transit * * * of property transported.' The Interstate Commerce Commission is authorized and required to enforce the provisions of the Act and, after hearing, if it be of opinion that any regulation or practice of a carrier be unjust or unreasonable, or unjustly discriminatory, 'or otherwise in violation of the provisions of this act,' to determine what practice is or will be just, fair and reasonable to be thereafter followed and to make an order that the carrier cease and desist from violation to the extent that the Commission finds violation does or will exist."

[fols. 138-139] All this language applies with full force and effect to each of the cases here.

We are unable to say that the findings in respect to the several industrial plants lacked support in the evidence. Rather we find substantial support for each. We are, therefore, bound to accept them and to hold the orders valid.

We find nothing in the record distinguishing these cases from those considered by the Supreme Court.

Accordingly the temporary injunctions heretofore entered will be dissolved and each of the bills dismissed for want of equity at the cost of plaintiffs.

The foregoing includes and is adopted by us as our findings of fact and conclusions of law.

Entered this 27th day of April, A. D. 1938.

William M. Sparks, Judge. James H. Wilkerson, Judge. Walter C. Lindley, Judge.

[fol. 140] In United States District Court for the Northern District of Illinois, Eastern Division

In Equity. No. 14738

Inland Steel Company, Plaintiff,

vs.

United States of America, Indiana Harbor Belt Railroad Company, and Interstate Commerce Commission, Defendants

Final Decree—April 27, 1938

This cause came on to be heard for final hearing and was heard on petition, answers to petition and proofs, and was argued by counsel before the specially-called and constituted District Court convened pursuant to the provisions of law; and thereupon, upon consideration thereof, all of said judges concurring, it was finally determined, ordered, adjudged and decreed as follows, viz:

1. That the order heretofore entered herein dated August 28, 1935, granting an interlocutory injunction, be, and the same is, in all respects, hereby vacated and set aside and the interlocutory injunction heretofore issued pursuant thereto, be, and the same is hereby, dissolved, and that all sums, which pursuant to the terms of the allowance tariffs of the carrier defendant herein would have been payable to the plaintiff since the date of said interlocutory injunction and which sums have been pursuant to the last paragraph of said interlocutory injunction set up by said carriers on its books of account, subject to the further order of this Court, shall be retained by said carrier as a part of its general funds and said account canceled.

[fols. 141-145] 2. That the relief prayed in the petition be, and the same is hereby, denied, and the petition is hereby dismissed for want of equity.

By the Court, this 27th day of April, 1938.

William M. Sparks, United States Circuit Judge.
James H. Wilkerson, United States District Judge.
Walter C. Lindley, United States District Judge.

[fol. 146] IN UNITED STATES DISTRICT COURT

In Equity. No. 14738

[Title omitted]

MOTION TO MODIFY FINAL DECREE—Filed May 25, 1938.

Now comes the above named plaintiff and moves this Honorable Court to modify the final decree entered by it in the above entitled cause on April 27, 1938, in the manner hereinafter set forth, and in support of said motion, plaintiff respectfully shows:

I

The aforesaid final decree of the Court fails to consider certain facts and circumstances hereinafter more particularly set forth; chiefly, the fact that subsequent to the interlocutory injunction in this case, the Commission, by order, postponed the effective date of the cease and desist order entered in this cause and the carrier voluntarily filed a new tariff supplement continuing the allowances in effect, without regard to the requirements of the Court's injunction. Moreover, in other similar cases, the courts and the Commission have permitted the continued payments of allowances condemned in orders of the Commission in the underlying proceedings until the tariffs providing therefor finally had been canceled.

II

The Indiana Harbor Belt Railroad Company is the only carrier defendant in the above entitled cause, in which plaintiff prayed for injunction restraining the enforcement of the order attached to the 19th Supplemental Report of the Interstate Commerce Commission, 209 I. C. C. 747, condemning an allowance of $1.85 per loaded car. This defendant entered no appearance and made no answer to the bill of complaint.

[fol. 147] III

The allowance to the plaintiff industry for terminal services performed by that industry is published by the Indiana Harbor Belt Railroad Company in its tariff I. C. C. No. 830, which was issued March 11, 1933, and effective April 15, 1933. A certified copy of this tariff and of the supplements hereinafter referred to are attached hereto as Exhibit A.

This tariff remained in full force and effect to the date of the final decree herein.

IV

The order of the Interstate Commerce Commission, which has been the subject of this suit, was entered July 11, 1935, to become effective September 3, 1935, but was postponed by the further order of the Commission to June 15, 1937. Prior thereto, this Court entered an interlocutory injunction on September 28, 1935, providing as follows:

"Now, therefore, *it is ordered* that during the pendency of this matter the United States of America and the Interstate Commerce Commission be and they are hereby restrained and enjoined from taking any steps for the enforcement and execution of the aforesaid report and order entered the 11th day of July, 1935, in said Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, in so far as the same apply to petitioner, Inland Steel Company, and the said report and order are suspended, stayed, and set aside, pending the further order of the court;

It is further ordered that the operation of the aforesaid tariff schedule filed by defendant, Indiana Harbor Belt Railroad Company, to become effective September 3, 1935, cancelling the aforesaid allowance to plaintiff be, and it is hereby, suspended and set aside, pending the further order of this Court.

It is further ordered, that until the further order of the Court, any and all sums due and payable to plaintiff, under the aforesaid tariff providing said allowance, shall be set up by defendant Indiana Harbor Belt Railroad Company on its books of account, which sums so set up shall be paid over to plaintiff, or canceled, only upon the further order of this Court, plaintiff by its counsel having agreed in open court to such arrangement, without prejudice."

[fol. 148] V

The Commission's above mentioned order of February 26, 1937, voluntarily postponing the effective date of its order to June 15, 1937, was received in evidence by this Court at the final hearing herein. It reads as follows:

"Upon further consideration of the record in the above-entitled proceeding, and good cause appearing therefor:

It is ordered, That the effective date of the order attached to the nineteenth supplemental report therein be, and it is hereby, postponed to June 15, 1937.

It is further ordered, That the said order shall in all other respects remain in full force and effect."

VI

On August 1, 1935, the Indiana Harbor Belt Railroad Company published Supplement No. 1 to its Tariff I. C. C. No. 830, cancelling the allowance in conformity with the cease and desist order of the Interstate Commerce Commission, which was then to be effective September 3, 1935. Thereafter, the Indiana Harbor Railroad Company filed its Supplement No. 2 to its Tariff I. C. C. No. 830, postponing until further notice the Cancellation Supplement No. 1. Plaintiff urges and contends that it is entitled to receive all sums which arose under the terms of the tariff because said tariff has at all times remained in full force and effect and has never been suspended or canceled.

VII

The decree as entered September 28, 1935, is erroneous in fact and in law because (1) the Court received no evidence and made no finding of facts upon which it could base such a decree and (2) the Court has no jurisdiction to set aside the terms of the tariffs and has no power to command a departure therefrom.

Wherefore, plaintiff moves this Honorable Court to modify the final decree entered by it in the above entitled cause on April 27, 1938, by striking therefrom that portion of paragraph 1 of said decree which reads as follows:

[fol. 149] "and that all sums, which pursuant to the terms of the allowance tariffs of the carrier defendant herein would have been payable to the plaintiff since the date of said interlocutory injunction and which sums have been pursuant to the last paragraph of said interlocutory injunction set up by said carriers on its books of account, subject to the further order of this Court, shall be retained by said carrier as a part of its general funds and said account canceled,"

and by entering its further order directing the defendant, Indiana Harbor Belt Railroad Company, to account for and

pay over to plaintiff all sums which have become payable pursuant to the allowance tariff.

Nuel D. Belnap, John S. Burchmore, Solicitors for Plaintiff.

[fol. 150] Exhibit "A" to Motion to Modify Decree

(Certified Copies of Tariff and Supplements)

[fol. 151] Interstate Commerce Commission, Washington

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the schedules hereto attached and more particularly hereinafter described, are true copies of schedules filed with the said Interstate Commerce Commission on dates specified below, to wit:

Indiana Harbor Belt Railroad Company Local Freight Tariff, I. C. C. No. 830; said schedule having been filed on March 11, 1933. Supplement No. 1 to said I. C. C. No. 830, filed August 2, 1935. Supplement No. 2 to said I. C. C. No. 830, filed August 30, 1935.

The pencil and stamped additions appearing on the copies hereto attached are expressly excluded from this certification, as none of said additions appear on said schedules so filed.

In Witness Whereof I have hereunto set my hand and affixed the Seal of said Commission this 5th day of May, A. D., 1938.

(Signed) W. P. Bartel, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 152] No supplement to this tariff will be issued, except for the purpose of cancelling the tariff, unless otherwise specifically authorized by the Commission.

G. F. D. No. 505-A Cancels G. F. D. No. 505	I. R. C. No. 528 Cancels I. R. C. No. 511	I. C. C. No. 830 Cancels I. C. C. No. 796

Indiana Harbor Belt Railroad Company

Local Freight Tariff

Covering

Allowances to

Inland Steel Company

at

Indiana Harbor, Indiana

On all carload shipments (including trap cars containing 6,000 pounds or more of less carload freight) destined to or coming from the plant of the Inland Steel Company at Indiana Harbor, Ind., the terminal switching service is performed by the Inland Steel Company for account of the Indiana Harbor Belt Railroad Company. Such terminal switching service, for which this allowance is made, consists of the handling of the cars between the point of interchange of such cars with this company and the point at which such cars are unloaded or the point at which such cars are loaded in said plant.

For such terminal service performed for the Indiana Harbor Belt Railroad Company by the Inland Steel Company at Indiana Harbor, Ind., the Inland Steel Company will be allowed $1.85 per loaded car which will include the handling of the empty cars in the reverse direction.

This allowance is not in excess of the average actual cost of the service as disclosed in a joint study of the operation of the plant facility made during the year 1927, and filed with Interstate Commerce Commission.

Issued March 11, 1933. Effective April 15, 1933.

Reduction.

Issued by W. H. Ward, General Freight Agent, La Salle Station, La Salle and Van Buren Streets, Chicago, Ill.

(100-Req. T-576.)

[fol. 153] Supplement No. 1 contains all changes from the original tariff that are effective on the date hereof.

Supplement No. 1 to G. F. D. No. 505-A Cancels G. F. D. No. 505-A	Supplement No. 1 to I. R. C. No. 528 Cancels I. R. C. No. 528	Supplement No. 1 to I. C. C. No. 830 Cancels I. C. C. No. 830

Indiana Harbor Belt Railroad Company

Supplement No. 1

to

Local Freight Tariff G. F. D. No. 505-A

Cancels

Local Freight Tariff G. F. D. No. 505-A

Covering

Allowances to

Inland Steel Company

at

Indiana Harbor, Indiana

Cancellation Notice

The above numbered tariff is hereby withdrawn and cancelled.

Issued August 1, 1935. Effective September 3, 1935.

Issued in compliance with order of Interstate Commerce Commission Ex Parte 104, Part II, Terminal Services, Nineteenth Supplemental Report dated July 11, 1935.

Issued by Leroy Blue, General Freight Agent, La Salle Station, La Salle and Van Buren Streets, Chicago, Ill.

(100-Req. T.-614.)

[fols. 154-155]

Supplement No. 2 to G. F. D. No. 505-A	Supplement No. 2 to I. R. C. No. 528	Supplement No. 2 to I. C. C. No. 830

Supplements Nos. (1) 1 and 2 contain all changes from the original tariff that are effective on the date hereof.

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(1) Cancellation Supplement.

Indiana Harbor Belt Railroad Company

Supplement No. 2

to

Local Freight Tariff G. F. D. No. 505-A

covering

Allowances to

Inland Steel Company

at

Indiana Harbor, Indiana

Effective September 3, 1935

Suspension Notice

Provisions of Supplement No. 1 to I. C. C. No. 830, I. R. C. No. 528, G. F. D. No. 505-A, are hereby suspended until further notice in compliance with order issued August 28, 1935, by the District Court of the United States for the Northern District of Illinois, Eastern Division, in the case of the Inland Steel Company versus United States of America, Indiana Harbor Belt Railroad Company and Interstate Commerce Commission.

During the period of suspension rates shown in tariff will apply.

Issued by Leroy Blue, General Freight Agent, La Salle Station, La Salle and Van Buren Streets, Chicago, Ill.

(100-Req. T.-616.)

[fols. 156-157] IN UNITED STATES DISTRICT COURT

Equity. No. 14738

[Title omitted]

ORDER DENYING MOTION TO MODIFY DECREE—Filed June 13, 1938

Before Sparks, Circuit Judge, and Wilkerson and Lindley, District Judges

Motion of plaintiff for oral argument on motion to modify final decree denied. Motion of plaintiff to modify final decree denied.

13 June, 1938.

[fol. 158] IN UNITED STATES DISTRICT COURT

In Equity. No. 14738

[Title omitted]

PETITION FOR APPEAL—Filed June 24, 1938

Inland Steel Company, plaintiff in the above entitled cause, feeling itself aggrieved by the final decree entered in said cause by this Court on the 27th day of April, 1938, and by the order entered the 13th day of June, 1938, denying the motion of plaintiff for modification of said final decree, prays an appeal from said decree and order to the Supreme Court of the United States.

The particulars wherein said plaintiff considers the decree and order erroneous are set forth in the assignment of errors accompanying this petition and to which reference is hereby made.

Said plaintiff prays that a transcript of record, proceedings and papers on which said decree and order were made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated June 22, 1938.

Nuel D. Belnap, John S. Burchmore, Solicitors for Inland Steel Company, Plaintiff.

[fol. 159] IN UNITED STATES DISTRICT COURT

In Equity. No. 14738

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 24, 1938

Inland Steel Company, plaintiff in the above entitled cause, now comes and files the following assignment of errors in connection with its petition for an appeal from the final decree entered by this Court on the 27th day of April, 1938, in said cause and from the further order entered June 13, 1938, denying the motion of plaintiff to modify said final decree:

The District Court erred:

1. In ordering in its final decree that all sums, which pursuant to the terms of the allowance tariffs of the carrier defendant herein would have been payable to the plaintiff since the date of an order of interlocutory injunction entered by the Court on August 28, 1935, and which sums have been pursuant to the last paragraph of said interlocutory injunction set up by said carrier on its books of account, subject to the further order of this Court, shall be retained by said carrier as a part of its general funds and said account canceled.

2. In failing and refusing to authorize and direct the carrier defendant herein to pay over to the plaintiff all sums which pursuant to the terms of the published tariffs of the carrier defendant, have become due and owing to the plaintiff since the date of the said interlocutory injunction.

[fols. 160-162] 3. In entering the order of June 13, 1938, denying the motion of plaintiff to modify the final decree (a) by striking therefrom that portion of paragraph 1 of said decree which reads as follows: "and that all sums, which pursuant to the terms of the allowance tariffs of the carrier defendant herein would have been payable to the plaintiff since the date of said interlocutory injunction and which sums have been pursuant to the last paragraph of said interlocutory injunction set up by said carriers on its books of account, subject to the further order of this Court, shall be retained by said carrier as a part of its general funds and

said account canceled," and (b) by entering its further order directing the defendant, Indiana Harbor Belt Railroad Company, to account for and pay over to plaintiff all sums which have become payable pursuant to the allowance tariff.

4. In that the final decree in substance and result sets aside and nullifies the provisions of a tariff voluntarily published by the defendant carrier and filed with the Interstate Commerce Commission, in accordance with Section 6 of the Interstate Commerce Act.

5. In that the final decree in substance and result makes effective on September 3, 1935, an order of defendant Interstate Commerce Commission, although the effective date of said order was postponed to June 15, 1937, by further order of said Commission.

6. In that the decree, in authorizing and directing the carrier defendant to withhold payments to plaintiff, was not supported by any evidence or by findings of fact or conclusions of law by the Court, required by Equity Rule 70½.

Nuel D. Belnap, John S. Burchmore, Solicitors for Plaintiff.

[fols. 163-169] In United States District Court

In Equity. No. 14738

[Title omitted]

Order Allowing Appeal—June 24, 1938

Plaintiff, having filed its petition for appeal herein, same is hereby granted and the plaintiff is hereby allowed to appeal said case, and

It is Ordered, that said appeal be, and the same is hereby, entered to the Supreme Court of the United States upon the filing of a bond by the said plaintiff in the sum of Five Hundred Dollars, with good and sufficient surety to be approved by this Court, conditioned upon said plaintiff prosecuting its appeal to effect, and answering all costs if it fail to make its appeal good.

Dated this 24th day of June, 1938.

James H. Wilkerson, United States District Judge.

[fol. 170] IN UNITED STATES DISTRICT COURT

In Equity. No. 14738

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed July 19, 1938

To the Clerk of the Above-Entitled Court:

Please prepare a Transcript of the Record in the above entitled cause in the matter of the appeal therein and include in said Transcript in the order given below the following matter, viz:

1. Plaintiff's petition or bill of complaint with appendices thereto, filed August 5, 1935.
2. Chancery subpoena to defendant Indiana Harbor Belt Railroad Company with return of service thereon, filed August 21, 1935.
3. Intervention and appearance of Interstate Commerce Commission, filed August 23, 1935.
4. Answer of Interstate Commerce Commission, filed August 23, 1935.
5. Answer of United States, filed August 28, 1935.
6. Order of Interlocutory Injunction, entered August 28, 1935.
7. Stipulation re consolidation of cases, filed December 2, 1936.
8. Notice, filed March 1, 1938.
9. Order of the Interstate Commerce Commission, dated February 26, 1937, in Ex Parte No. 104 Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, received in evidence at the final hearing before the Court on April 18, 1938.
10. Findings of fact and conclusions of law entered by the Court April 27, 1938.

[fols. 171-174] 11. Final Decree, entered April 27, 1938.

12. Notice of Motion, filed May 25, 1938.
13. Plaintiff's motion to modify final decree, with appendices thereto, filed May 25, 1938.
14. Memorandum order entered by the Court, June 13, 1938, denying motion of plaintiff for oral argument on motion to modify final decree and denying plaintiff's motion to modify final decree.
15. Plaintiff's petition for appeal.
16. Plaintiff's assignment of errors.

17. Plaintiff's statement as to jurisdiction on appeal.
18. Order allowing appeal.
19. Notice of Appeal.
20. Notice pursuant to paragraph 2 of Rule 12.
21. Notice to Attorney General of Illinois.
22. Original citation on appeal.
23. All acknowledgments and admissions of service.
24. This praecipe for transcript of record.
25. Clerk's certificate.

Dated July 19, 1938.

Nuel D. Belnap, John S. Burchmore, Solicitors for Inland Steel Company.

Appellees, by their counsel, consent to the preparation and transmittal of the record in accordance with the foregoing praecipe and waive their right to file a counter-praecipe.

Elmer B. Collins, for the Attorney General; Edward M. Reidy, for Interstate Commerce Commission, by E. C. Hurley, Assistant United States Attorney.

[fols. 175-177] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 178-180] [Caption omitted]

[fol. 181] In United States District Court for the Northern District of Illinois, Eastern Division

In Equity. No. 15335

Chicago By-Product Coke Company

vs.

United States of America, Interstate Commerce Commission, The Belt Railway Company of Chicago, Chicago & Illinois Western Railroad, Illinois Central Railroad Company

Petition—Filed September 2, 1936

To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

Your petitioner, Chicago By-Product Coke Company, a corporation, presents this its petition against United States

of America, Interstate Commerce Commission, The Belt Railway Company of Chicago, Chicago & Illinois Western Railroad and Illinois Central Railroad Company; and thereupon plaintiff respectfully states:

[fol. 182] I

Plaintiff is a corporation duly organized and existing under the laws of the State of Delaware with principal office and principal operating office and plant at Chicago, in the State of Illinois and the Northern District of Illinois, Eastern Division, where it is now and continuously since October 1921, has been engaged in the manufacture of gas, coke, sulphate of ammonia and tar; and in the conduct of said business it receives large quantities of coal and other materials, and ships large quantities of coke and by-products from said plant.

II

Defendant Interstate Commerce Commission is a commission created and functioning under an Act of Congress known as the Interstate Commerce Act. (49 U. S. C. A. chapter 1.) Defendant, The Belt Railway Company of Chicago is a corporation under the laws of Illinois with principal operating office at Chicago, Illinois. Defendant, Chicago & Illinois Western Railroad, is a corporation under the laws of Illinois, with principal operating office at Chicago, Illinois. Defendant, Illinois Central Railroad Company, is a corporation under the laws of Illinois with principal operating office at Chicago, Illinois. Each of said last named defendants is a common carrier of property by railroad, transported between Chicago, Illinois, and points in other states, and as such common carrier is subject to the Interstate Commerce Act, and owns and operates lines of railroad within said State of Illinois. Each of said defendants transports interstate freight for delivery to plaintiff's plant at Chicago, Illinois, and in like manner transports freight from said plant moving to destinations in other states.

[fol. 183] Insofar as said Illinois Central Railroad Company participates in said traffic it does so over the line of the said Chicago & Illinois Western Railroad which acts as a switching carrier for the Illinois Central Railroad Company.

III

Plaintiff brings this suit in equity against the United States of America pursuant to an Act of Congress approved October 22, 1913, 38 statutes at large 219 (28 U. S. C. A. Sec. 41, subsections 45, 46, 47), and under the general equity jurisdiction of this Court, to enjoin, set aside and annul a certain report and order entered by the Interstate Commerce Commission on May 28, 1936, in a proceeding known as Ex Parte 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, said report and order being subtitled Fifty-sixth Supplemental Report of the Commission, Chicago, By-Product Coke Company Terminal Allowances; and to enjoin and restrain the respondent carriers from complying with the aforesaid order of the Commission entered May 28, 1936.

IV

The said Commission, on its own motion, entered an order under date of July 6, 1931, without any complaint having been made to or petition filed with said Commission, according to plaintiff's information and belief, which said order was in words and figures as follows:

[fol. 184] "Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 6th day of July, A. D. 1931

Ex Parte No. 104

Practices of Carriers Affecting Operating Revenues or Expenses

Sections 12 and 15 (a) of the interstate commerce act being under consideration, and the commission desiring to know whether certain practices of carriers by railroad subject to the act will affect operating revenues or expenses are lawful and consistent with economical and efficient management, and to have full and complete information necessary to perform its duties; all with a view to making such order or orders or findings of fact as may be appropriate under the interstate commerce act:

It is ordered, That the commission on its own motion and without formal pleading, enter upon a proceeding of inquiry and investigation into and concerning practices of carriers by railroad subject to the interstate commerce act which affect operating revenues or expenses;

It is further ordered, That copies of this order be served upon all common carriers by railroad subject to the interstate commerce act; and that such carriers be made respondents to this proceeding;

And it is further ordered, That this proceeding be assigned for hearing at such times and places and with respect to such practices as the commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)"

Plaintiff presumes that aforesaid order was served upon all common carriers by railroad subject to the Act, and therefore avers that said order was served upon each of the carriers respondents thereto, including The Belt Rail-[fol. 185] way Company of Chicago, Chicago & Illinois Western Railroad and Illinois Central Railroad Company.

Subsequently, the Commission issued its notice under date of August 13, 1931, entitled: "Ex Parte No. 104, Part II, Terminal Services of Class I Carriers. Notice of Information to be sought at hearings." In said notice, the Commission ostensibly defined "in scope and restriction" said Part II of the aforesaid general inquiry as intended to establish facts concerning various services, charges and practices of carriers subject to the Act, including, among others, terminal services and practices in the receipt and delivery of carload freight, including the spotting of cars, and all services and privileges, except transit and lighterage, incident to said terminal services within the meaning of Section 6 of the Interstate Commerce Act, which affect the measure of the transportation service performed at the line-haul rates and the value of such services to the consignors and consignees; the extent to which the line-haul rates include charges for such services; allowances and absorptions made out of the line-haul rates; and the extent to which such services reach beyond the carriers' terminals to particular locations on private tracks, sidings, industrial plant tracks, and on the rails of industrial common carriers.

The Commission conducted extended hearings in said proceeding at numerous places, at various times from September 15, 1931, to November 21, 1932; thereafter a "proposed report" was prepared by the Commission's Director of Service, W. P. Bartel, before whom the hearings had been held; exceptions were filed by numerous parties; and oral argument before the Commission was had. Thereafter the Commission issued its report, dated May 14, 1935, [fol. 186] without order (which report reported in 209 I. C. C. 11, has subsequently been described by the Commission as its original report, and is hereinafter so referred to), in which it reviewed the subject matter of the inquiry generally and set forth its legal conclusions.

A copy of said original report of the Commission is attached hereto, marked Appendix A, and is made a part hereof as fully as though set forth at length herein.

On said 14th day of May, 1935, and thereafter on various dates, the Commission issued various so-called supplemental reports in said Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services. Among other such supplemental reports, the Commission entered on May 28, 1936, its Fifty-sixth Supplemental Report entitled Chicago By-Product Coke Company Terminal Allowances.

A true copy of said Fifty-sixth Supplemental Report, together with the order attached thereto and entered on the same date, is attached to this petition, marked Appendix B, and is made a part hereof as fully as though set forth at length herein. This is the order and report herein sought to be set aside and enjoined.

On or about June 26, 1936, plaintiff filed with the Commission its motion for postponement of the effective date of said order of May 28, 1936; and in response thereto the Commission entered its further order dated June 30, 1936, providing that the effective date of aforesaid order of May 28, 1936, by its terms made effective July 17, 1936, should be and it was thereby postponed to October 15, 1936, the said order in all other respects to remain in full force and effect.

[fol. 187] V

The uniform custom and practice of all common carriers, in the State of Illinois, and in other states throughout the Union, including the carriers named as defendants in this

bill, is to state in their rate tariffs published and filed with the Commission the city, town or other station locality to and from which they undertake to transport freight at the rates and charges in such tariffs stated, without stating the precise spot in such city, town or station locality at which they undertake to receive or deliver such freight. Under such tariffs it is and for many years has been the uniform custom and practice to include within the carload freight rates established and maintained for the transportation of carload freight the complete service comprehended in (a) the providing and furnishing of a suitable car for transportation and the placement of the car at any point reasonably accessible and convenient for loading on standard gauge tracks serving any and all industrial plants; and after the freight has been loaded in said cars by consignor, to remove the same and transport the goods therein to destination; and (b) to deliver the carload freight by placing the car, wherein such freight is transported, at any point reasonably convenient for the unloading and removal of the freight from the car on the standard gauge tracks serving any and all industrial plants and to remove the empty car therefrom after the freight has been received and unloaded by the consignee. It is customary for railroads for various reasons sometimes to employ other railroad companies to complete their undertaking to spot the cars as aforesaid, and to pay such other railroads for such service, and sometimes to employ the shipper or receiver of freight to complete said undertaking to spot the cars as aforesaid [fol. 188] and in such cases to compensate by payments termed allowances to such shippers and receivers of freight for such service. Defendant carriers have followed generally such custom in serving shippers and receivers of freight over their respective lines of road.

Pursuant to such custom, defendants, The Belt Railway Company of Chicago, Chicago & Illinois Western Railroad and Illinois Central Railroad Company, at all times have provided in their respective tariffs that, for the compensation afforded by their established rates for transportation between designated cities, towns or other station localities, each would deliver and receive carload freight by the placement of the cars at any reasonable and convenient point for the loading or unloading thereof on the tracks serving the said plant of plaintiff at Chicago, Illinois, the same as

at all plants, industries and business establishments adjacent to their railroads and served by so-called private or industrial sidings.

The duly filed and published tariffs of defendants, The Belt Railway Company of Chicago, Chicago & Illinois Western Railroad and Illinois Central Railroad Company and all other carriers in the State of Illinois, and in other states of the United States, as in effect now and for more than twenty years past, name rates for transportation covering the complete services described in this paragraph, with respect to carload freight moving to and from any and all railroad terminals and industries, plants, warehouses or other business establishments; and the same rates have been applicable and have been applied by all of said carriers, whether carload shipments of freight originated on so-called public team tracks or on so-called private side tracks serving the plants, industries and other business [fol. 189] establishments and whether such shipments were delivered on so-called public team tracks or on so-called private side tracks as aforesaid.

VI

The record in the aforesaid investigation by the Commission in Ex Parte 104, Part II, contains abundant testimony by numerous witnesses supporting the averments in paragraph V hereof; and there is no evidence in said record to the contrary.

There is no evidence in said record that the carriers in serving any industry, plant, warehouse or other business establishment have sought to limit their duty or terminate their obligation under the line-haul rates by placement of cars at any point short of or intermediate to the place mutually agreed upon with the shipper or consignee as reasonable and convenient for the loading or unloading of carload freight, where it was possible for the railroad locomotives to operate safely and without excessive delay.

VII

Plaintiff, Chicago By-Product Coke Company, for several years past has rendered the transportation service and furnished the instrumentalities employed in moving carloads of freight between the rails of the railroad defendants, The Belt Railway Company of Chicago and Illinois Western

Railroad, adjacent to plaintiff's plant and between the rails of the defendant, Illinois Central Railroad Company, which does not reach plaintiff's plant directly but which serves said plant over the rails of the defendant, Chicago & Illinois Western Railroad, which acts as a switching carrier for said Illinois Central Railroad Company, as aforesaid, and [fol. 190] convenient points of loading or unloading in said plant; an application for compensation in the form of allowance for such service was submitted by plaintiff to said defendants in the year 1921 and thereafter said defendants by tariff duly established an allowance in the amount of the actual cost of service, performed, subject to a maximum of $1.85 per loaded car, effective October 10, 1922.

Prior to such time the plaintiff had received an allowance of $1.00 per car from the defendants, The Belt Railway Company of Chicago and Chicago & Illinois Western Railroad, in accordance with the terms of a temporary agreement between plaintiff and said defendants.

The aforesaid allowance is sometimes less and never more than the full cost to plaintiff of performing the placement services which are included in the established rates and which the allowance is designed to cover; and said allowance is less than it would cost either of the said railroad companies to perform the service with its owned engines and regularly employed crews. These facts are established by uncontradicted evidence before the Commission in the record of said Ex Parte 104, Part II.

VIII

At all times since October 10, 1922, the duly filed and published tariffs of the aforesaid defendant railroad companies have been in force, providing payment of allowance by said defendants to plaintiff for the latter's transportation service of moving and placing cars at loading and unloading points in its plant.

The said tariff of The Belt Railway Company of Chicago currently effective provides as follows:

[fol. 191] The Belt Railway Company of Chicago

Local Freight Tariff No. 136 Covering Allowances to Chicago By-Products Coke Company at Hawthorne, Illinois

On all carload revenue shipments destined to or coming from the plant of the Chicago By-Products Coke Com-

pany, the terminal switching is performed by the Chicago By-Products Coke Company for the account of The Belt Railway Company of Chicago.

The Chicago By-Products Coke Company will be allowed for such services, out of the current Chicago, Illinois rates, the actual cost of service performed, as specified in monthly bills submitted to this company, on all cars handled between point of interchange with this company and the first point at which cars are loaded or unloaded, subject to a maximum allowance of $1.85 per car.

The above allowance includes the handling of the empty cars in the reverse direction or empty cars handled preparatory to loading.

Issued September 5, 1922. Effective October 10, 1922.

The tariffs of the defendants, Chicago & Illinois Western Railroad and Illinois Central Railroad Company, contain similar provisions.

[fol. 192] IX

Defendants, The Belt Railway Company of Chicago and Chicago & Illinois Western Railroad, have filed with the Interstate Commerce Commission their tariffs to become effective July 17, 1936, providing for withdrawal and cancellation of the aforesaid allowance to plaintiff and stating that such cancelling tariffs are issued under authority of the aforesaid Fifty-sixth Supplemental Report of May 28, 1936.

A postponement notice was issued by such defendants however, effective July 17, 1936, postponing the effective date of such cancellation notices to October 15, 1936.

Plaintiff is informed and believes that the defendant, Illinois Central Railroad Company, will likewise file a tariff cancelling its aforesaid allowance effective October 15, 1936, in compliance with the aforesaid order of the Commission and plaintiff upon information and belief alleges that the said defendants, The Belt Railway Company of Chicago and Chicago & Illinois Western Railroad, would not have filed such cancelling tariffs, as aforesaid, and that the said defendant, Illinois Central Railroad, would not contemplate filing such cancelling tariff were it not for the fear of incurring penalties for failure to do so.

X

The aforesaid order of the Commission instituting its investigation Ex Parte 104 on its own motion and without formal pleading, as set forth in paragraph IV of this petition, was not based upon any complaint or application of any sort submitted to the Commission by any person, either carrier or shipper, that the practice above described as in force at plaintiff's plant was unreasonable, discriminatory, [fol. 193] or in any way a violation of law, so far as known to plaintiff.

In the branch of said proceeding designated Part II, Terminal Services of Class I carriers, in which the testimony relative to plaintiff's plant was taken at Chicago, Illinois, during the hearing, September 27, 1932, no party, either carrier or shipper, presented any testimony purporting to show that said practice at plaintiff's plant was unreasonable or discriminatory or otherwise in violation of law in any respect. Plaintiff's representative appeared at said hearing in response to a request addressed to plaintiff by the Secretary of the Commission, and said representative in response to the call of the presiding Director of Service of the Commission, became a witness and presented testimony describing said practice. No other testimony as to said practice at plaintiff's plant was presented except on behalf of defendants, The Belt Railway Company of Chicago and Illinois Central Railroad Company, and said defendant railroad companies presented their testimony in support of the existing practice and tariffs.

XI

The said report and order of May 28, 1936, as above set forth, is unlawful and void in the following respects:

1. The Commission was without authority to make the said order.

2. The Commission failed to make requisite findings sufficient to support its order.

3. The Commission's said report and order are arbitrary and in violation of previous rulings as to the duty of a common carrier by railroad to perform the service of placement of empty cars for load at, and removal of loaded cars from, [fol. 194] point of loading, and placement of loaded car at,

and removal of empty car from, point of unloading, within the plant of the plaintiff.

4. There was no evidence upon which the Commission could find—

(a) That the defendants have complied with their obligation to plaintiff under their rates for interstate transportation to deliver and receive carload freight when they place the cars containing said freight on the socalled interchange tracks described of record or remove the cars therefrom;

(b) That the transportation services which it is the duty of the carriers to perform for plaintiff begin and end at said interchange tracks;

(c) That the service of moving cars beyond the so-called interchange tracks are industrial services which it is not the duty of the carriers to perform;

(d) That by the payment of an allowance to plaintiff for service performed by it in moving cars containing interstate shipments beyond said interchange tracks, defendants provide the means by which plaintiff enjoys a preferential service not accorded to shippers generally;

(e) That to refund or remit a portion of the rates and charges collected or received as compensation for the transportation of property, as set forth in said supplemental report is in violation of paragraph (7) of Section 6 of the Act.

5. The evidence on which the order is based shows conclusively that the terminal allowance paid by each of the defendant railroad companies to plaintiff is for a transportation service embraced within the service for which the defendant railroad companies publish, charge and receive the rates named in their tariffs of freight charges filed with the [fol. 195] Interstate Commerce Commission; that the said terminal allowance is no more than just and reasonable and, being published in the tariffs of each of the defendant railroad companies is just as binding upon each defendant railroad company as is any rate named in its tariffs to be collected for the transportation of property by it in interstate commerce; and when the extent of the service of the carrier in the receipt and delivery of freight to be performed for the line haul rate is made clear by the published tariffs of

the carrier and by the course of business followed by the carrier as recited above, and when it is stated in a tariff of the carrier that an allowance is made to the shipper or receiver of the freight for the performance of a part of said service, and the amount of such allowance is stated, such tariff being duly published and established and in force, such service and such allowance can not be in violation of Section 6 of the Interstate Commerce Act.

6. In view of paragraph (13) of Section 15 of the Interstate Commerce Act, the Commission has no power to prohibit any defendant railroad company from employing plaintiff to furnish services or from using plaintiff's facilities in the transportation of plaintiff's property. The Commission has power only to determine whether the amount of the allowance paid by defendant railroad companies to plaintiff for services and facilities is more than is just and reasonable for such services rendered and facilities furnished, and to fix a limit which shall not be exceeded in the payment therefor.

The Commission in its said order of May 28, 1936, forbidding any and all allowance to plaintiff for services rendered and facilities furnished, exceeded its authority and acted arbitrarily; therefore, the said order is void and of no effect.

[fol. 196] 7. The evidence wholly fails to show any violation of law by the plaintiff or by either of the defendant railroad companies in connection with the terminal allowance at plaintiff's plant as above described.

8. The report and order were not entered after full hearing and due investigation; and plaintiff was not accorded due notice and full hearing as required by the statute.

XII

Plaintiff has handled and will continue to handle for each of the defendant railroad companies loaded cars on which the terminal allowance payable as compensation for said handling is paid pursuant to the tariff of defendant carriers providing for such payment, and said service cannot be paid for or compensated except as authorized and provided by duly filed and published tariff. Unless the order of the Commission be set aside and the defendants be required to withdraw their canceling tariffs, plaintiff will be compelled

to perform said service of transportation for the benefit of said railroad companies but at its own cost and expense, without the possibility of payment being made by the defendant railroad companies in the absence of tariff authority, thereby subjecting plaintiff to irreparable loss and injury.

In consideration whereof and inasmuch as plaintiff has no adequate remedy at law, and may have relief only in a Court of Equity, plaintiff prays that this petition be received and filed; that writs of subpoena be issued by the Clerk of the Court, as provided by law, commanding the United States of America, Interstate Commerce Commission, The Belt Railway Company of Chicago, Chicago & Illinois Western Railroad and Illinois Central Railroad Company to appear [fol. 197] and defend this action; that notice hereof be given to the Attorney General of the United States and to the Interstate Commerce Commission; that upon the filing of this bill the Judge of this Court call to his assistance two other Judges, one of whom shall be a Circuit Judge, and that upon five days' notice of the time and place of hearing having been given to the Attorney General of the United States and to the Interstate Commerce Commission and to said defendant carriers, the plaintiff be granted an interlocutory injunction restraining the United States of America and the Interstate Commerce Commission from enforcing the terms of said order which, as extended, requires defendant carriers to cease and desist on or before October 15, 1936, and thereafter to abstain from the practice in said order described; and that upon final hearing of this case, a decree be entered adjudging the said order to be in all respects null and void and permanently enjoining, annulling and setting aside the enforcement, operation and execution of said order.

And plaintiff further prays that a preliminary or interlocutory order or injunction be entered, requiring the railroad defendants to cancel the tariffs herein referred to, which were filed in alleged conformity with the said order of the Commission, and suspending the cancellation of the terminal allowance now being paid plaintiff, until final determination of this cause, and that upon the final hearing herein, a decree be entered perpetually enjoining, suspending, annulling and setting aside the said tariffs and requir-

ing the said carriers to file new tariffs restoring the terminal allowances in effect on May 27, 1936, on interstate traffic handled by the plaintiff at its said plant at Chicago, Illinois, unless and until changed by agreement of the parties or by a lawful decision of the Interstate Commerce Commission.

[fol. 198] Plaintiff further prays, inasmuch as the purpose of the foregoing prayers for relief is to set aside the order of the Commission of May 28, 1936, and to restore the status quo of May 27, 1936, for such other and further orders or decrees as may be necessary to set aside said order of the Interstate Commerce Commission and to require the railroad defendants to vacate, annul and set aside any and all action which may have been taken under and by reason of said order of the Commission, and to take such action as may be necessary to restore the parties and properties affected by said order to the status of May 27, 1936, and for such further and other relief in the premises as the nature of the case shall require, and to this court shall seem meet.

Nuel D. Belnap, Herman F. Mueller, John S. Burchmore, Solicitors for Plaintiff. Walter, Burchmore & Belnap, 1522 First National Bank Bldg., Chicago, Ill.

[fols. 199-268] *Duly sworn to by T. G. Janney. Jurat omitted in printing.*

[fol. 269] APPENDIX "B" TO PETITION

INTERSTATE COMMERCE COMMISSION

Chicago By-Products Coke Company Terminal Allowances

Ex Parte No. 104

Practices of Carriers Affecting Operating Revenues or Expenses

Part II, Terminal Services

Submitted October 17, 1934. Decided May 28, 1936

Carriers' obligations under their line-haul rates found not to extend beyond the present points of interchange,

and payment of allowances to the industry for services beyond such points found unlawful.

Same appearance as in the original report.

Fifty-Sixth Supplemental Report of the Commission Division 3, Commissioners McManamy, Lee, and Miller

By Division 3:

In the original report in this proceeding, Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, certain principles were announced concerning the payment of allowances to industries for performing spotting service at their industrial plants, or the performance of such serv- [fol. 270] ice by respondents in lieu of payment. This supplemental report deals with the propriety and lawfulness of allowances paid by respondent carriers to the Chicago By-Product Coke Company, hereinafter called the industry, for spotting service performed by the latter within its plant at Chicago, Ill.

This industry produces gas, coke, and coke by-products such as sulphate of ammonia and tar. Its extensive plant covers an area approximately 2,200 feet wide and 3,200 feet long. It contains numerous buildings including a machine shop, boiler house, generator house, a by-products building, three coke oven batteries and the facilities necessary for storing and handling large quantities of coal and coke. These buildings and facilities are served by a network of about 35 tracks extending throughout the plant and having a capacity of about 800 cars. The plant tracks connect with those of The Belt Railway Company of Chicago and the Chicago & Illinois Western Railroad, hereinafter referred to as respondents, or the B. Ry. of C. and the C. & I. W., respectively. Approximately 30,000 cars are handled at the industry annually, divided about 60 per cent inbound and 40 per cent outbound. The principal inbound commodity is coal, and the outbound shipments consist largely of coke. There are 2 principal loading points for coke, 2 for tar and 1 for ammonia sulphate; and 2 unloading points for coal, 2 for oil, 2 for coke, and 1 each for acid, lime, oxide, and miscellaneous stores. Both inbound and outbound shipments are delivered to and received by respondents on seven parallel interchange tracks which extend along the west side of, and mostly within the indus-

trial property. The main line of the B. Ry. of C. parallels the west side of the plant and connects with the latter at the southern end of the interchange tracks. The line of the C. & I. W. parallels the north side of the plant at some dis- [fol. 271] tance therefrom, and connects with the north end of the interchange tracks. Cars routed over the B. Ry. of C. and the C. & I. W. are hauled by the former directly past its connection with the interchange tracks to its connection with the C. & I. W. The latter line delivers such cars to the plant at approximately the same point where delivery is made directly by the B. Ry. of C. On traffic routed over the B. Ry. of C. movement over the C. & I. W. is entirely unnecessary from an operating standpoint.

On coal traffic received by the B. Ry. of C. from its connection and delivered direct to the industry, that respondent receives a division of the through rate of 1.5 cents per 100 pounds, minimum 60,000 pounds, or $9 per car. On such traffic interchanged by the B. Ry. of C. with the C. & I. W. the B. Ry. of C. receives $5.40 per car, although a longer haul by the latter is involved than if it made direct delivery to the plant. On such hauls the C. & I. W. receives 16 cents per ton, minimum 60,000 pounds. The C. & I. W. is owned in equal shares by the Illinois Central Railroad Company, hereinafter called the I. C., the Commonwealth Edison Company, and the Peoples Gas Light and Coke Company, which is closely affiliated with the Chicago By-Products Coke Company.

The industry, with its own power moves the cars between the interchange tracks and loading and unloading points located on tracks within the plant. Approximately 60 per cent of the total engine-hour time is devoted to interchange switching and 40 per cent to intraplant switching. The plant operates 24 hours a day and as many locomotives are kept in service as the industrial needs require. A witness for the industry confirmed statements previously made by him and other plant officials to our service agents, that, in their opinion, it would be impossible to operate the plant in an [fol. 272] efficient manner with the switching performed by railroad crews and locomotives; that the plant operations are carried on in such a way that the plant locomotives, being under plant supervision, can perform the spotting service more efficiently and at less expense than the railroads could perform it, and that, knowing the plant and the operations required, it would be possible for the crew of the plant

locomotives to perform the spotting with less interference than if a carrier crew should perform it.

The industry receives an allowance of actual cost of the spotting service subject to a maximum of $1.85 per loaded car. This allowance was established by tariff publication effective October 10, 1922. It appears that a cost study by the B. Ry. of C. was not made until several months after the allowance was established. This cost study showed a cost of 56 cents per car, but the witness for the B. Ry. of C. was not prepared to say whether that amount would reasonably represent the cost, as he did not know what elements were taken into consideration. Prior to the establishment of the present allowance an allowance of $1 per car was paid by the B. Ry. of C. under an operating agreement. The allowance of $1.85 was published without regard to the cost study and was made to conform in amount with the prevailing allowances which had recently been established at other industries in the Chicago district. An allowance similar in amount is received by the industry on traffic handled over the C. & I. W. which is operated by the I. C. The record is not entirely clear which of these carriers actually makes the payment. Each of them provides by tariff for the allowance. A witness for the I. C. testified that the allowance was made by the C. & I. W., but an exhibit introduced by the same witness contains an extract from the I. C. tariff showing that the allowance is made by the I. C., [fol. 273] and returns to our questionnaire show that the I. C. paid $191,007.62 for the period from 1927 to 1931, inclusive. During the same period the B. Ry. of C. paid $85,538.25 in allowances to the industry.

A witness for the industry testified that it would be possible to operate the plant efficiently with the entire switching service performed by the railroad crews and locomotives, although it had never been performed by them; and that the industry would have no objection to the carriers' performing the service if it could be assured of the same adequate service which it now obtains by operation of its own locomotives. A map of the plant, an exhibit of record, clearly discloses the difficulty which would be encountered by the respondents should they be called upon to perform the spotting beyond the yard where interchange is now made. The loading and unloading points are in the interior of the plant. An unloading point for oil and two for oxide, and a loading point for tar are reached by a track which ex-

tends from the northern end of the interchange tracks along the northern boundary of the plant property. Those points apparently could be conveniently reached by the C. & I. W. locomotives, but could not be reached by the B. Ry. of C., except by traversing the entire length of the interchange yard from the point of its connection, a distance of approximately 3,000 feet, then in a reverse direction eastward for distances ranging from 1,000 to 3,000 feet. Loading and unloading points for acid, lime, oil and sulphate, and an unloading point at the storage building are located about the center of the plant. Apparently these could be reached directly from the B. Ry. of C. connection by the movement of that carrier's locomotives over plant tracks for distances ranging from 1,800 to 3,000 feet. To reach those points in the most direct manner from the C. & I. W. con- [fol. 274] nection would involve movement over plant tracks near the northern boundary of the plant property for a distance of slightly more than 3,000 feet, and a movement in the reverse direction for distances ranging from 800 to 1,700 feet. Practically all of the other loading and unloading points within the plant could be reached only by movements similar to those above described. All outbound shipments are weighed for billing purposes on a track scale located on one of the tracks in the interchange yard. In all cases one or more reverse switching movements are necessary in reaching the scale.

Much of the coal is unloaded at a track hopper in the southern part of the industrial property, approximately 5,000 feet from the C. & I. W. connection, and could be reached from that point only by traversing practically the entire length of the interchange yard and then proceeding eastward over a plant track. The spotting of cars at the track hopper is done by an electric car puller which can handle only one car at a time. The operations necessary in serving the car puller at this plant are not fully described of record. However, the industry produces a large amount of gas and must be prepared at all times to meet the demands of the public. It is clear that a locomotive must be available to move cars between the interchange yards and the track hopper at such times and in such numbers as the industrial needs require. Such service is a part of the industrial processes and unrelated to transportation which carriers are obligated to render under their line-haul rates. Clearly a line must be drawn at some

point where transportation ends and industrial processes begin, and just as clearly that point in this case is the interchange yard. Kansas City Power & Light Co. Terminal Allowance, 210 I. C. C. 103, 106. For a carrier to perform an industrial service without proper compensation [fol. 275] is a mere gratuity and unlawful. Minnesota By-Products Coke Co. Terminal Allowance, 209 I. C. C. 421. Injunction denied, Koppers Gas & Coke Co. v. United States, 11 F. Supp. 467.

The track layout is shown to be unusually complex as compared with ordinary team tracks or industrial tracks upon which carriers ordinarily perform switching. One of the tracks leading to loading and unloading points in the central part of the plant contains a 23-degree curve, which accommodates only locomotives of small type or special design. The record is conclusive that the amount of spotting service required by this industry and the manner in which it must be performed, is in excess of that which carriers are obligated to render under their line-haul rates. An allowance paid for such industrial service works undue and unreasonable preference and advantage to the favored industry, and works undue and unreasonable prejudice and disadvantage to shippers in the same business who are not the beneficiaries of such allowance. Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, 37.

We find that the existing line-haul rates of the respondent carriers must be construed to cover the delivery and receipt of shipments at a reasonably convenient point; that the interchange tracks described of record constitute such a reasonable point; that the transportation service which it is the duty of the respondents to perform begins and ends at the interchange tracks; and that the movements beyond those interchange tracks are industrial services which it is not the duty of respondents to perform under the line-haul rates.

We further find that by the payment of allowances for the service performed on interstate shipments beyond the [fol. 276] interchange tracks described of record, the respondent carriers provide the means by which the industry enjoys a preferential service not accorded to shippers generally, and refund or remit a portion of the rates or charges

collected or received as compensation for the transportation of property, in violation of section 6(7) of the act.

An appropriate order will be entered.

Order

At a Session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 28th day of May, A. D. 1936

Chicago By-Products Coke Company Terminal Allowances

Ex Parte No. 104

Practices of Carriers Affecting Operating Revenues or Expenses

Part II. Terminal Services

Upon further consideration of the record in this proceeding, concerning the lawfulness and propriety of the allowances paid by The Belt Railway Company of Chicago, the Chicago & Illinois Western Railroad and the Illinois Central Railroad Company to the Chicago By-Products Coke Company, for performance by the latter of spotting service within its plant at Chicago, Ill., and the Commission having under date of May 14, 1935, made and filed a report in Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, containing its legal conclusions with respect to the general situation presented, and the division having on the date hereof made and filed a supplemental report containing its findings of fact and conclusions with respect to [fols. 277-278] the allowances paid to the Chicago By-Products Coke Company, which reports are hereby referred to and made a part hereof, and the division having found in said supplemental report that the payment of said allowances by the above-named respondents violates the Interstate Commerce Act as set forth in the above-mentioned reports:

It is ordered, That the Belt Railway Company of Chicago, the Chicago & Illinois Western Railroad, and the Illinois Central Railroad Company be, and they are hereby, notified and required to cease and desist on or before July 17, 1936, and thereafter to abstain from such unlawful practice.

By the Commission, division 3.

George B. McGinty, Secretary. (Seal.)

[fol. 279] IN UNITED STATES DISTRICT COURT

SUBPOENA—Filed September 16, 1936

The President of the United States of America to The Belt Railway Company of Chicago, Chicago & Illinois Western Railroad, Illinois Central Railroad Company, Greeting:

We Command You and Every of You, That you be and appear before our Judges of our District Court of the United States of America, for the Northern District of Illinois, at Chicago, in the Eastern Division of said District, on or before the twentieth day after service of this writ, exclusive of the day of service, to answer or otherwise defend against a certain bill in equity this day filed by Chicago By-Product Coke Company in the Clerk's office of said Court, in the City of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Northern District of Illinois to Execute.

Witness the Honorable Charles E. Woodward, Judge of the District Court of the United States of America, for the Northern District of Illinois, at Chicago aforesaid, this 2nd day of September, in the year of our Lord One Thousand Nine Hundred and Thirty-six and of our Independence the 161st year.

Henry W. Freeman, Clerk. (Seal.)

Memorandum

The defendants are required to file their answer or other defense in the Clerk's office on or before the twentieth day after service hereof upon them, excluding the day of service; otherwise the said bill may be taken pro confesso.

Henry W. Freeman, Clerk.

[fols. 280-281] Served this writ on the within named The Belt Railway Company of Chgo. a corporation, by delivering a copy thereof to J. R. Barse Vice Pres. An agent of said corporation this 4 day of Sept. 1936.

The President of said Corporation not found in my district.

Served this writ on the within named Chicago & Illinois Western Railroad a corporation by delivering a copy

thereof to E. C. Craig, Gen. Counsel and agent of said corporation this 9 day of Sept. 1936.

The president of said Corporation not found in my district.

Served this writ on the within named Illinois Central Railroad Company a corporation, by delivering a copy thereof to E. C. Craig Gen. Counsel and agent of said corporation this 9 day of Sept. 1936.

The president of said Corporation not found in my district.

Wm. H. McDonnell, U. S. Marshal, by E. Glaser, Deputy.

Marshal's fees:

3 Services	$6.00
2 Miles	.12
	$6.12

[File endorsement omitted.]

[fol. 282] IN UNITED STATES DISTRICT COURT

In Equity. No. 15335

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed September 16, 1936

The Interstate Commerce Commission, one of the defendants in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiff's petition contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I and II of the petition, the Commission, for the purposes of this suit, admits that the allegations therein contained are true.

II

Answering paragraphs III to XII, inclusive, of the petition, the Commission admits and alleges that it made the

original report dated May 14, 1935, and the Fifty-sixth Supplemental Report and order, dated May 28, 1936, referred to in paragraph IV of the petition, copies of which, respectively, are attached to the petition as Appendix A and Appendix B, in a proceeding then pending before the Commis-
[fol. 283] sion and entitled Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, which proceeding was instituted by the Commission on its own motion, for the purposes, among others, of determining whether certain practices of what are referred to in said original report as Class I carriers, relating to the terminal services and affecting the operating revenues and expenses of said carriers, were in violation of the Interstate Commerce Act; and the Commission respectfully refers the Court to the text of said reports and order for more full and complete information in the premises.

The Commission further alleges that in said proceeding the parties thereto, including the plaintiff herein, were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence bearing upon the matters covered in and by said appendixes was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff herein, by the counsel of said parties; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiff in this suit, whereupon the Commission determined said matters and entered and duly served upon the plaintiff herein, and upon other interested parties, its said reports and order; that said reports and order included the Commission's findings of fact, decision, conclusions, orders and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said reports and order are based.

[fol. 284] The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said reports it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the petition herein.

The Commission further alleges that said order of May 28, 1936, was not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said petition.

Further and more particularly answering paragraph XI of the petition, the Commission denies each of and all the allegations therein contained.

The Commission especially denies that plaintiff will be subjected to either irreparable loss or irreparable injury, as alleged in paragraph XII of the petition, unless said order of May 28, 1936, is set aside by the Court.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said original report of May 14, 1935, and in said Fifty-sixth Supplemental Report and order of May 28, 1936, which reports and order are hereby referred to and made a part hereof.

[fol. 285] All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

Interstate Commerce Commission, by Edward M. Reidy. Daniel W. Knowlton, Chief Counsel, of Counsel.

[fols. 286-287] *Duly sworn to by Frank McManamy. Jurat omitted in printing.*

[fol. 288] IN UNITED STATES DISTRICT COURT

In Equity. No. 15335

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA—Filed September 17, 1936

United States of America, one of the defendants in the above-entitled cause, for answer to the petition filed therein against it, says:

I

United States admits the truth of the facts alleged in sections I, II, III, and IV of the petition except that it denies that this suit is maintainable under the general equity jurisdiction of this court, and denies that this court, constituted under the Act mentioned in said section III, has power to enjoin and restrain the defendant carriers from complying with the order of the Interstate Commerce Commission entered May 28, 1936, or any other order, and alleges that the jurisdiction of this court so constituted is limited to the enjoining of orders which may be unlawful and the enforcing of orders which are lawful.

II

United States denies all the matters things, and conclusions alleged in sections V and VI of the petition, and will demand strict proof thereof upon the trial of this cause.

[fol. 289]

III

United States denies the allegations contained in section VII of the petition, except that it admits that the plaintiff has performed its own plant switching and car spotting services for several years, admits that defendant carriers have paid and now pay an allowance in the amount of $1.85 per loaded car upon the pretense that in performing its car switching service, the plaintiff acts for said railroads, but United States denies that said switching and car spotting service performed by plaintiff is a transportation service, denies that said allowance may lawfully be paid, and alleges that, as found by the Interstate Commerce Commis-

sion in its report annexed as Appendix B to the petition (which Appendix is hereby referred to and made a part hereof), the services performed by plaintiff are industrial services which it is not the duty of said railroads to perform or pay for under their line-haul rates.

IV

Answering sections VIII and IX of the petition, United States admits that the railroads therein mentioned have published the tariffs therein described and quoted, but United States denies that the publication of said tariffs makes it lawful for said railroads to pay, or for plaintiff to receive, the allowances or compensation therein published.

V

United States denies the matters, things, and conclusions alleged in section X of the petition, except that it admits that at hearings held before the Interstate Commerce Commission pursuant to notice, plaintiff's representatives and representatives of the railroad defendants herein, appeared, and, upon full opportunity accorded by the Commission, presented testimony with respect to the switching and spotting of cars performed by plaintiff within its plant and the payment by said railroad defendants of allowances therefor.

[fol. 290]

VI

United States denies each and every allegation made and contained in sections XI and XII of the petition, and denies that the order of the Interstate Commerce Commission issued May 28, 1936, is unlawful or void for the reasons alleged in said sections or for any other reason, and United States particularly denies that plaintiff will suffer irreparable or any other legal damage if said order is not enjoined and annulled.

VII

Except as herein expressly admitted, United States denies each and every allegation contained in the petition and in the several separate sections thereof.

Wherefore, having fully answered the petition, United States prays that the relief therein prayed be denied and that said petition be dismissed with costs to the plaintiff,

and that it have such other and further orders, decrees or relief as may be just and proper.

(Signed) Elmer B. Collins, Special Assistant to the Attorney General. (Signed) John Dickinson, Assistant Attorney General. (Signed) Michael L. Igoe, United States Attorney.

[fols. 291-292] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fols. 293-294] In United States District Court

In Equity. No. 15335

[Title omitted]

Appearance—Filed September 21, 1936

We hereby enter the appearance of The Belt Railway Company of Chicago, one of the defendants herein, and ourselves as its attorneys.

J. R. Barise and Samuel Kassel, Attorneys for Defendants, The Belt Railway Company of Chicago.

[fol. 295] In United States District Court

In Equity. No. 15335

[Title omitted]

Interlocutory Injunction—December 2, 1936

The plaintiff having heretofore filed its bill of complaint praying for a permanent injunction against the enforcement, operation and execution of a certain report and order made and entered by the Interstate Commerce Commission, on the 28th day of May, 1936, in certain proceedings known and entitled as Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, the said order being effective, as postponed, on the 15th day of December, 1936, and praying certain other relief as set forth in the bill; and upon motion of plaintiff for such interlocutory injunction pending the final order of the court herein;

And the Honorable James H. Wilkerson, Judge of the District Court of the United States for the Northern District of Illinois, pursuant to Section 47 of the United States Code, having called to his assistance to hear and determine said application for said interlocutory injunction, two other judges, namely, Honorable Evan A. Evans, United States Circuit Judge and Honorable Walter C. Lindley, United States District Judge;

And it appearing that five days' notice of hearing by this court on such application for interlocutory injunction, to be held on Wednesday, the 2nd day of December, 1936, was given to the above named respondents, to the Attorney General of the United States and to the Interstate Commerce Commission;

[fols. 296-302] And the court having jurisdiction of the parties hereto, and of the subject matter, and being fully advised in the premises and upon hearing;

Now, therefore, it is ordered that during the pendency of this matter the United States of America and the Interstate Commerce Commission be and they are hereby restrained and enjoined from taking any steps for the enforcement and execution of the aforesaid report and order entered the 28th day of May, 1936, in said Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, insofar as the same apply to plaintiff, Chicago By-Product Coke Company, and the said report and order are suspended, stayed, and set aside, pending the further order of the court.

It is further ordered, That until the further order of the Court, The Belt Railway Company of Chicago, Chicago & Illinois Western Railroad, and Illinois Central Railroad Company are authorized and directed to withhold payments of the allowances covered by their tariffs to the plaintiff, Chicago By-Product Coke Company.

By the Court.

Evan A. Evans, Circuit Judge. James H. Wilkerson, District Judge. Walter C. Lindley, District Judge.

December 2, 1936.

[fol. 303] IN UNITED STATES DISTRICT COURT

ORDERS OF I. C. C.—Filed April 18, 1938

[fol. 304] Order

At a Session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 26th day of February A. D., 1937.

Inland Steel Company Terminal Allowance

Ex Parte No. 104

Practices of Carriers Affecting Operating Revenues or Expenses

Part II, Terminal Services

Upon further consideration of the record in the above-entitled proceeding, and good cause appearing therefor:

It is ordered, That the effective date of the order attached to the nineteenth supplemental report therein be, and it is hereby, further postponed to June 15, 1937.

It is further ordered, That the said order shall in all other respects remain in full force and effect.

By the Commission, Division 3.

George W. Laird, Acting Secretary. (Seal.)

[fol. 305] Order

At a Session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 10th day of September, A. D., 1936

Chicago By-Product Coke Company Terminal Allowances

Ex Parte No. 104

Practices of Carriers Affecting Operating Revenues or Expenses

Part II, Terminal Services

Upon further consideration of the record in the above-entitled proceeding, and the motion filed on behalf of the Chicago By-Product Coke Company for postponement of the order therein attached to the fifty-sixth supplemental report, and good cause appearing therefor:

It is ordered, That the effective date of said order, by its terms made effective July 17, 1936, which was postponed on June 30, 1936 by order of the Commission to October 15, 1936, be, and it is hereby, further postponed to December 15, 1936.

It is further ordered, That the said order shall in all other respects remain in full force and effect.

By the Commission, Division 3.

George B. McGinty, Secretary. (Seal.)

[fols. 306-321] Order

At a Session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 30th day of June, A. D., 1936

Chicago By-Product Coke Company Terminal Allowances

Ex Parte No. 104

Practices of Carriers Affecting Operating Revenues or Expenses

Part II, Terminal Services

Upon further consideration of the record in the above-entitled proceeding, and the motion filed on behalf of the Chicago By-Product Coke Company for postponement of the order therein attached to the fifty-sixth supplemental report, and good cause appearing therefor:

It is ordered, That the effective date of said order, by its terms made effective July 17, 1936, be, and it is hereby, postponed to October 15, 1936.

It is further ordered, That the said order shall in all other respects remain in full force and effect.

By the Commission, Division 3.

George B. McGinty, Secretary. (Seal.)

[fol. 322] In United States District Court for the Northern District of Illinois, Eastern Division

In Equity. No. 15335

Chicago By-Products Coke Company, Plaintiff,

vs.

United States of America et al., Defendants; and Interstate Commerce Commission, Intervening Defendant

Final Decree—April 27, 1938

This cause coming on to be heard on the final hearing, and was heard, on petition, answers to petition and proofs, and was argued by counsel before the specially-called and constituted District Court pursuant to the provisions of law; and thereupon, upon consideration thereof, all of said judges concurring, it was finally determined, ordered, adjudged and decreed as follows, viz:

1. That the order heretofore entered herein, dated December 2, 1936, granting a preliminary injunction, be, and the same is, in all respects, hereby vacated and set aside and the preliminary injunction heretofore issued pursuant thereto, be, and the same is hereby, dissolved. The railroad defendants, The Belt Railway Company of Chicago, Chicago & Illinois Western Railroad, and Illinois Central Railroad Company are expressly relieved from the provision of the order of December 2, 1936, authorizing and directing them, "until the further order of the court", to withhold payments of the allowances covered by their [fols. 323-327] tariffs to the plaintiff, and the amounts so withheld are to be retained by said railroads in their general funds.

2. That the relief prayed in the petition be, and the same is hereby, denied, and the petition is dismissed for want of equity.

By the Court, this 27th day of April, 1938.

William M. Sparks, United States Circuit Judge.
James H. Wilkerson, United States District Judge.
Walter C. Lindley, United States District Judge.

[fol. 328] IN UNITED STATES DISTRICT COURT

In Equity. No. 15335

[Title omitted]

MOTION TO MODIFY FINAL DECREE—Filed May 25, 1938

Now comes the above named plaintiff and moves this Honorable Court to modify the final decree entered by it in the above entitled cause on April 27, 1938, in the manner hereinafter set forth, and in support of said motion, plaintiff respectfully shows:

I

The aforesaid final decree of this Court fails to consider certain facts and circumstances hereinafter more particularly set forth; chiefly, the fact that prior and subsequent to the interlocutory injunction in this case, the Commission by order postponed the effective date of the original cease and desist order entered in this cause and the carriers voluntarily filed new tariff supplements, by express special permission of the Commission, continuing the allowances in effect independently of the requirements of the Court's injunction. Moreover, in other similar causes, the courts and the Commission permitted the continued payments of allowances condemned in orders of the Commission in the underlying proceedings until the tariffs providing therefore finally had been cancelled.

II

The Belt Railway Company of Chicago, the Chicago & Illinois Western Railroad and the Illinois Central Railroad [fol. 329] Company are the carrier defendants in the above entitled cause, in which plaintiff prayed for injunction restraining the enforcement of the order attached to the 56th Supplemental Report of the Interstate Commerce Commission, 216 I. C. C. 8, condemning an allowance of $1.85 per loaded car. The defendant Belt Railway entered no appearance and filed no answer in this suit. The Illinois Central Railroad published a tariff providing for an allowance but no shipments moved under this tariff and this defendant will not be again referred to herein.

III

The allowance to the plaintiff industry for terminal services performed by that industry for the Belt Railway Company of Chicago is published in that carrier's Tariff No. I. C. C. 120, which was issued September 5, 1922 effective October 10, 1923. A certified copy of this tariff and of the supplements hereinafter referred to are attached hereto as Exhibit A. This tariff remained in full force and effect to the date of the final decree herein.

IV

The allowance to the plaintiff industry for terminal services performed by that industry for the Chicago & Illinois Western Railroad is published in that carrier's Tariff I. C. C. No. 125-A, which was issued February 4, 1935 and effective March 11, 1935. A certified copy of this tariff and of the supplements hereinafter referred to are attached hereto as Exhibit B. This tariff remained in full force and effect to the date of the final decree herein.

V

The order of the Interstate Commerce Commission which has been the subject of this suit was entered May 28, 1936 to become effective July 17, 1936, but was postponed by the further orders of the Commission entered June 30, 1936 and September 10, 1936 and February 26, 1937. The final effective date of the order was by its terms June 15, 1937. Meanwhile, this Court entered an injunction on December 2, 1936, providing:

[fol. 330] "Now, therefore, *it is ordered* that during the pendency of this matter the United States of America and the Interstate Commerce Commission be and they are hereby restrained and enjoined from taking any steps for the enforcement and execution of the aforesaid report and order entered the 28th day of May, 1936, in said Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II. Terminal Services, insofar as the same apply to plaintiff, Chicago By-Product Coke Company, and the said report and order are suspended, stayed, and set aside, pending the further order of the court.

"*It is further ordered,* That until the further order of the Court, The Belt Railway Company of Chicago, Chicago & Illinois Western Railroad, and Illinois Central Railroad Company are authorized and directed to withhold payments of the allowances covered by their tariffs to the plaintiff, Chicago By-Product Coke Company."

VI

The Commission's above mentioned order of February 26, 1937, voluntarily postponing the effective date of its order to June 15, 1937, was, with the other similar orders, received in evidence by this Court at the final hearing herein. It reads as follows:

"Upon further consideration of the record in the above-entitled proceeding, and good cause appearing therefor:

"*It is ordered,* That the effective date of the order attached to the fifty-sixth supplemental report therein be, and it is hereby, postponed to June 15, 1937.

"*It is further ordered,* That the said order shall in all other respects remain in full force and effect."

VII

On June 10, 1936, the Belt Railway Company of Chicago published Supplement No. 1 to its Tariff I. C. C. No. 120, cancelling the allowance in conformity with the cease and desist order of the Interstate Commerce Commission, then to be effective July 17, 1936. Thereafter, and pursuant to the above mentioned order of the Commission postponing the effective date of its original order, the Belt Railway Company of Chicago filed Supplement No. 2 to its Tariff I. C. C. No. 120, postponing the cancellation of the allowance tariff. Likewise, by Supplements 3 and 4 to said [fol. 231] Tariff I. C. C. No. 20, the Belt Railway Company of Chicago subsequently further postponed the cancellation of the allowance tariff.

Similarly, on April 16, 1936, the Chicago & Illinois Western Railway published Supplement No. 4 to its Tariff I. C. C. No. 125-A, cancelling the allowance in conformity with the cease and desist order of the Interstate Commerce Commission, effective July 17, 1936. Thereafter, and pursuant to the above mentioned order of the Commission postponing the effective date of its original order, the Chicago

& Illinois Western Railway filed its Supplement No. 5 to said Tariff I. C. C. No. 125-A, postponing the cancellation of the allowance tariffs. By Supplements No. 7, 8, 9 and 10 to said Tariff I. C. C. No. 125-A, the Chicago & Illinois Western Railway further postponed the cancellation of or republished the tariff.

Plaintiff urges and contends that it is entitled to receive all sums which arose under the terms of the tariffs, because said tariffs have at all times remained in full force and effect and have never been suspended or cancelled.

VIII

The decree as entered September 28, 1935 is erroneous in fact and in law because (1) the Court received no evidence and made no finding of facts upon which it could base such a decree and (2) the Court has no jurisdiction to set aside the terms of the tariffs and has no power to command a departure therefrom.

Wherefore, plaintiff moves this Honorable Court to modify the final decree entered by it in the above entitled cause on April 27, 1938 by striking therefrom that portion of Paragraph 1 of said decree which reads as follows:

"And that all sums, which pursuant to the terms of the allowance tariffs of the carrier defendant herein, would have been payable to the plaintiff since the date of said interlocutory injunction and which sums have been pursuant to the last paragraph of said interlocutory injunction set up by said carriers on its books of account, subject to the further order of this Court, shall be retained by said carrier as a part of its general funds and said accounts cancelled."

[fol. 332] and by entering its further order directing the defendants, Belt Railway Company of Chicago and Chicago & Illinois Western Railway to account for and pay over to plaintiff all sums which have become payable pursuant to the allowance tariffs.

Nuel D. Belnap, John S. Burchmore, Solicitors for Plaintiff.

[fol. 333] EXHIBIT "A" TO MOTION TO MODIFY DECREE

(Certified Copies of Tariff and Supplements of Belt Railway Company)

[fol. 334] INTERSTATE COMMERCE COMMISSION, WASHINGTON

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the schedules hereto attached and more particularly hereinafter described, are true copies of schedules filed with the said Interstate Commerce Commission on dates specified below, to wit:

The Belt Railway Company of Chicago Local Freight Tariff No. 136, I. C. C. No. 120; said schedule having been filed on September 2, 1922.

Supplement No. 1 to said I. C. C. No. 120, filed June 13, 1936.

Supplement No. 2 to said I. C. C. No. 120, filed July 15, 1936.

Supplement No. 3 to said I. C. C. No. 120, filed October 13, 1936.

Supplement No. 4 to said I. C. C. No. 120, filed December 19, 1936.

The pencil and stamped additions appearing on the copies hereto attached are expressly excluded from this certification, as none of said additions appear on said schedules so filed.

In Witness Whereof I have hereunto set my hand and affixed the Seal of said Commission on this 5th day of May, A. D., 1938.

(Signed) W. P. Bartel, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 335] Ill. C. C. No. 91 I. C. C. No. 120

No Supplement to this Tariff will be issued except for the purpose of canceling the Tariff.

The Belt Railway Company of Chicago

Local Freight Tariff No. 136

Covering

Allowances

To

Chicago By-Products Coke Company

At

Hawthorne, Illinois

On all carload revenue shipments destined to or coming from the plant of the Chicago By-Products Coke Company, the terminal switching is performed by the Chicago By-Products Coke Company for the account of The Belt Railway Company of Chicago.

The Chicago By-Products Coke Company will be allowed for such services, out of the current Chicago, Illinois rates, the actual cost of service performed, as specified in monthly bills submitted to this company, on all cars handled between point of interchange with this company and the first point at which cars are loaded or unloaded subject to a maximum allowance of $1.85 per car.

The above allowance includes the handling of the empty cars in the reverse direction or empty cars handled preparatory to loading.

Issued September 5, 1922. Effective October 10, 1922.

Issued by Frank A. Spink, Traffic Manager, Chicago, Ill.

[fol. 336] Supplement No. 1 to
Ill. C. C. No. 91
Cancels Ill. C. C. No. 91

Supplement No. 1 to
I. C. C. No. 120
Cancels I. C. C. No. 120

The Belt Railway Company of Chicago

Supplement No. 1

to

Local Freight Tariff No. 136

Cancels Tariff No. 136

Covering

Allowances

to

Chicago By-Products Coke Company

at

Hawthorne, Illinois

Tariff No. 136, I. C. C. No. 120, Ill. C. C. No. 91, naming allowances to the Chicago By-Products Coke Company at Hawthorne, Illinois, for terminal switching service performed by the Chicago By-Products Coke Company is hereby withdrawn and cancelled.

Authority: Interstate Commerce Commission's Fifty-Sixth Supplemental Report Division 3 to Ex Parte No. 104, dated May 28, 1936.

Issued June 10, 1936. Effective July 17, 1936.

Issued by F. J. Wasson, General Traffic and Industrial Manager, Dearborn St. Station, Chicago, Illinois.

[fol. 337] Supplement No. 2 to Ill. C. C. No. 91 | Supplement No. 2 to I. C. C. No. 120

The Belt Railway Company of Chicago

Supplement No. 2

to

Local Freight Tariff No. 136

Covering

Allowances

to

Chicago By-Products Coke Company

at

Hawthorne, Illinois

Postponement Notice

The effective date of Supplement No. 1 to Tariff No. 136, I. C. C. No. 120, Ill. C. C. No. 91, is hereby postponed until October 15, 1936.

Pending restoration, reissue or cancellation of matter under postponement, provisions of I. C. C. No. 120, Ill. C. C. No. 91, The Belt Railway Company of Chicago Tariff No. 136 and effective supplements thereto apply.

Authority: Interstate Commerce Commission's Division No. 3 to Ex Parte No. 104, dated June 30, 1936.

Issued July 14, 1936. Effective July 17, 1936.

Issued on one (1) day's notice under special permission of the Interstate Commerce Commission No. 154536, July 14, 1936.

Departure from the terms of Rule 9 (E) of I. C. C. tariff circular 20 is authorized under special permission of the Interstate Commerce Commission No. 154536 of July 14, 1936.

Issued on one (1) day's notice under special permission of the Illinois Commerce Commission No. R 9021, July 14, 1936.

Issued by F. J. Wasson, General Traffic and Industrial Manager, Dearborn St. Station, Chicago, Illinois.

[fol. 338] Supplement No. 3 to Ill. C. C. No. 91 | Supplement No. 3 to I. C. C. No. 120

The Belt Railway Company of Chicago

Supplement No. 3

to

Local Freight Tariff No. 136

Covering

Allowances

to

Chicago By-Products Coke Company

at

Hawthorne, Illinois

Postponement Notice

The effective date of Supplement No. 1 to Tariff No. 136, I. C. C. No. 120, Ill. C. C. No. 91, is hereby further postponed to December 15, 1936.

Pending restoration, reissue or cancellation of matter under postponement, provisions of I. C. C. No. 120, Ill. C. C. No. 91, The Belt Railway Company of Chicago Tariff No. 136 and effective supplements thereto apply.

Authority: Interstate Commerce Commission's Division No. 3 to Ex Parte No. 104, dated September 10, 1936.

Issued October 13, 1936. Effective October 15, 1936.

Issued on one (1) day's notice under special permission of the Interstate Commerce Commission No. 156389, October 9, 1936.

Departure from the terms of Rule 9 (E) of I. C. C. tariff circular 20 is authorized under special permission of the Interstate Commerce Commission No. 156389 of October 9, 1936.

Issued on one (1) day's notice under special permission of the Illinois Commerce Commission No. R 9247, October 13, 1936.

ssued by F. J. Wasson, General Traffic and Industrial nager, Dearborn St. Station, Chicago, Illinois.

l. 339] Supplement No. 4 to Ill. C. C. No. 91 Cancels Supplement No. 3

Supplement No. 4 to I. C. C. No. 120 Cancels Supplement No. 3

The Belt Railway Company of Chicago

Supplement No. 4

to

Local Freight Tariff No. 136

Covering

Allowances

to

Chicago By-Products Coke Company

at

Hawthorne, Illinois

Cancellation Notice

The cancellation of terminal allowance to Chicago By-Products Coke Company as provided in Supplement No. 3 to I. C. C. No. 120, Ill. C. C. No. 91, is hereby canceled and withdrawn in compliance with order of the United States District Court, Northern District of Illinois, Eastern Division, at Chicago, Illinois, in Equity No. 15335, dated December 2, 1936.

The provisions of Tariff 136, I. C. C. 120, Ill. C. C. 91, continues in effect pending further amendment to this tariff.

Issued December 14, 1936 Effective December 15, 1936.

Issued by F. J. Wasson, General Traffic and Industrial Manager, Dearborn St. Station, Chicago, Illinois.

[fol. 340] EXHIBIT "B" TO MOTION TO MODIFY DECREE

(Certified Copies of Tariff and Supplements of Chicago & Illinois Western)

Interstate Commerce Commission
Washington

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the schedules hereto attached and more particularly hereinafter described, are true copies of schedules filed with the said Interstate Commerce Commission on dates hereinafter listed below, to wit:

Chicago & Illinois Western Railroad Freight Tariff G.F.D. 520-E, I.C.C. No. 125-A; original schedule having been filed on February 5, 1935.
Supplement No. 4 to said I.C.C. No. 125-A, filed April 17, 1936.
Supplement No. 5 to said I.C.C. No. 125-A, filed June 17, 1936.
Supplement No. 6 to said I.C.C. No. 125-A, filed July 9, 1936.
Supplement No. 7 to said I.C.C. No. 125-A, filed September 14, 1936.
Supplement No. 8 to said I.C.C. No. 125-A, filed December 12, 1936.
Supplement No. 9 to said I.C.C. No. 125-A, filed March 2, 1937.
Supplement No.10 to said I.C.C. No. 125-A, filed March 16, 1937.

The stamped and pencil additions appearing on the copies hereto attached are expressly excepted from this certification, as none of said additions appear on said schedules as filed.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of said Commission this 5th day of May, A. D., 1938.

ed below, to wit:

o & Illinois Western Railroad Freight Tariff G.F.D. 520-E, I.C.C. No. 125-A;
schedule having been filed on February 5, 1935.
Supplement No. 4 to said I.C.C. No. 125-A, filed April 17, 1936.
Supplement No. 5 to said I.C.C. No. 125-A, filed June 17, 1936.
Supplement No. 6 to said I.C.C. No. 125-A, filed July 9, 1936.
Supplement No. 7 to said I.C.C. No. 125-A, filed September 14, 1936.
Supplement No. 8 to said I.C.C. No. 125-A, filed December 12, 1936.
Supplement No. 9 to said I.C.C. No. 125-A, filed March 2, 1937.
Supplement No.10 to said I.C.C. No. 125-A, filed March 16, 1937.

e stamped and pencil additions appearing on the copies hereto attached are expressly ed from this certification, as none of said additions appear on said schedules d.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of said Commission this 5th day of May, A. D., 1938.

SECRETARY OF THE INTERSTATE COMMERCE COMMISSION.

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Ill. C. C. No. 21-A
(Cancels Ill. C. C. Nos. 12-A and 20-A)

I. C. C. No. 125-A
(Cancels I. C. C. Nos. 118-A and 124-A)

CHICAGO & ILLINOIS WESTERN RAILROAD

IN CONNECTION WITH

PARTICIPATING CARRIERS AS SHOWN HEREIN

STAMP HERE

DATE RECEIVED

FREIGHT TARIFF G. F. D. 520-E

(Cancels G. F. D. 516-E and 520-D)

—OF—

Local, Joint and Proportional Rates

APPLYING ON

CLASSES AND COMMODITIES

Between Stations in State of Illinois

—ALSO—

RULES GOVERNING HANDLING OF

CARLOAD FREIGHT

—AT AND BETWEEN—

Stations on Chicago & Illinois Western R. R.

—ALSO BETWEEN—

Stations Named Herein

—AND—

Junctions and Connecting Lines, and Between Connections

Governed (except as otherwise provided herein) by Illinois Freight Classification No. 17, R. A. Sperry's I. C. C. No. 288, Ill. C. C. No. 138, supplements thereto or successive issues thereof.

Distance or mileage commodity rates shown herein may be used only when no specific through commodity rates from and to the same points have been provided. When governed by a classification which also contains distance or mileage rates they will take precedence over the distance or mileage rates in such classification.

—OF—

Local, Joint and Proportional Rates

APPLYING ON

CLASSES AND COMMODITIES

Between Stations in State of Illinois

—ALSO—

RULES GOVERNING HANDLING OF

CARLOAD FREIGHT

—AT AND BETWEEN—

Stations on Chicago & Illinois Western R. R.

—ALSO BETWEEN—

Stations Named Herein

—AND—

Junctions and Connecting Lines, and Between Connections

Governed (except as otherwise provided herein) by Illinois Freight Classification No. 17, R A. Sperry's I. C. C. No. 288, Ill. C. C. No. 128, supplements thereto or successive issues thereof.

Distance or mileage commodity rates shown herein may be used only when no specific through commodity rates from and to the same points have been provided. When governed by a classification which also contains distance or mileage rates they will take precedence over the distance or mileage rates in such classification.

ISSUED FEBRUARY 4, 1935 **EFFECTIVE MARCH 11, 1935**

Issued by
W. F. EBERHARDT
Traffic Manager
135 East Eleventh Place,
CHICAGO, ILL.

500) R. R. DONNELLEY & SONS CO. CHICAGO (1934-2) 342

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LIST OF PARTICIPATING CARRIERS

Abbreviations of Carriers	CARRIER	CONCURRENCES			
		I. C. C.		Ill. C. C.	
		FX	No.	FX	No.
B. & O. C. T.	The Baltimore and Ohio-Chicago Terminal Railroad Company	3	53	3	17
B. Ry. of C	The Belt Railway Company of Chicago	4	118	3	3
C. B. & Q	Chicago, Burlington & Quincy Railroad Company	3	90	5	16
C. J.	Chicago Junction Railway (The Chicago River and Indiana Railroad Company, Lessee)	5	C. J. 8	5	C. J. 1
C. S. L.	Chicago Short Line Railway Company	5	10	5	1
C. W. P. & S	Chicago, West Pullman & Southern Railroad Company	5	25	5	5
I. C	Illinois Central Railroad Company	3	1521	3	2
I. N	Illinois Northern Railway	5	57	5	3
M. J.	Manufacturers' Junction Railway Company	5	12	5	1
Pullman	Pullman Railroad Company	5	1	5	2

INDEX TO COMMODITIES

LIST OF INDUSTRIES LOCATED ON CHICAGO & ILLINOIS WESTERN R. R.

NAME	LOCATION	NAME	LOCATION
American Hair & Felt Co	McCook	Lewis Tar Products Co	McCook
American Tar Products Co	Crawford	Loxite Inc	Hodgkins
(a)Barrett Co	Crawford	National Mosaic Tile Co	Crawford
Brisch Brick Co	Crawford	Peoples Gas By-Products Corp	Crawford
Burke & Sons, Alex	Crawford	Peoples Gas Light & Coke Co	Crawford
Cerney, Pickas & Co	Crawford	Riverside Lime & Stone Co	McCook
Chicago & Illinois Western R. R	Crawford	Penn, Wm., Oil Co	McCook
Chicago By-Products Co	Crawford	Sanitary District of Chicago	Crawford
City of Chicago:		Schick Oil Co	Crawford
House of Correction	Crawford	Schick, Wm., Cut Stone Co	Crawford
Municipal Power Plant	Crawford	Shell Petroleum Co	Crawford
Commonwealth Edison Co	Crawford	Steel Sales Corporation	Crawford
Connelly Iron Sponge Governor Co	Crawford	Stickney Coal Co	Crawford
Consumers Company	McCook	Universal Gasket & Manufacturing Co	Crawford
Cook County Paper Stock Co	Crawford	Universal Oil Products Co	McCook
Dolese & Shepard Co. (D. [illegible])	Crawford	Vacuum Oil Co	McCook

Distance Commodity Rates	Items 300, 305, 310	

LIST OF PARTICIPATING CARRIERS

Abbreviations of Carriers	CARRIER	CONCURRENCES			
		I. C. C.		Ill. C. C.	
		FX	No.	FX	No.
B. & O. C. T.	The Baltimore and Ohio-Chicago Terminal Railroad Company	3	53	3	17
B. Ry. of C	The Belt Railway Company of Chicago	4	118	3	3
C. B. & Q.	Chicago, Burlington & Quincy Railroad Company	3	90	5	16
C. J.	Chicago Junction Railway (The Chicago River and Indiana Railroad Company, Lessee)	5	C. J. 8	5	C. J. 1
C. S. L.	Chicago Short Line Railway Company	5	10	5	1
C. W. P. & S.	Chicago, West Pullman & Southern Railroad Company	5	25	5	5
I. C.	Illinois Central Railroad Company	3	1521	3	2
I. N.	Illinois Northern Railway	5	57	5	3
M. J.	Manufacturers' Junction Railway Company	5	12	5	1
Pullman	Pullman Railroad Company	5	1	5	2

INDEX TO COMMODITIES

COMMODITY	Item No.	COMMODITY	Item No.	COMMODITY	Item No.
Bran	300	Freight of all kinds	205,210,215, 225,230,235, 240,245	Railway Equipment	200,205,215
Cinders	265, 270, 275			Refuse	255
Dirt, Black	265, 270, 275			Rip Rap	265,270,275
Feed	305	Less than carload traffic	245	Stone	265,270,275
Flour	310	Railway Company Material	260	Tar	220
Flux Stone	250				

LIST OF INDUSTRIES LOCATED ON CHICAGO & ILLINOIS WESTERN R. R.

NAME	LOCATION	NAME	LOCATION
American Hair & Felt Co	McCook	Lewis Tar Products Co	McCook
American Tar Products Co	Crawford	Loxite Inc	Hodgkins
(a)Barrett Co	Crawford	National Mosaic Tile Co	Crawford
Brisch Brick Co	Crawford	Peoples Gas By-Products Corp	Crawford
Burke & Sons, Alex	Crawford	Peoples Gas Light & Coke Co	Crawford
Cerney, Pirkas & Co	Crawford	Riverside Lime & Stone Co	McCook
Chicago & Illinois Western R. R	Crawford	Penn, Wm., Oil Co	McCook
Chicago By-Products Co	Crawford	Sanitary District of Chicago	Crawford
City of Chicago:		Schick Oil Co	Crawford
House of Correction	Crawford	Schick, Wm., Cut Stone Co	Crawford
Municipal Power Plant	Crawford	Shell Petroleum Co	Crawford
Commonwealth Edison Co	Crawford	Steel Sales Corporation	Crawford
Connelly Iron Sponge Governor Co	Crawford	Stickney Coal Co	Crawford
Consumers Company	McCook	Universal Gasket & Manufacturing Co	Crawford
Cook County Paper Stock Co	Crawford	Universal Oil Products Co	McCook
Dolese & Shepard Co. (Refuse)	Crawford	Vacuum Oil Co	McCook
Dolese & Shepard Co	McCook	Waterway Paper Co	Crawford
Elliott Foundry Co	Crawford	Western Foundry Co	Crawford
Garley Steel Co.	Crawford	Wisconsin Lime & Cement Co	Crawford
Gases Inc	McCook	Wycoff Drawn Steel Co	Crawford
Hansel & Elcock Co	Crawford		
Inter Ocean Refining Co	McCook		
Kettler Elliott Co	Crawford		
Koppers Products	Crawford		

PUBLIC TEAM TRACKS

Crawford, Ill. Hodgkins, Ill McCook, Ill
Kedzie Ave., Chicago, Ill

a Applicable only on shipments in tank cars.

RULES AND REGULATIONS

Rule No.	SUBJECT	RULES
5	Advance Charges	This Company will not receive carload shipments from connecting lines with charges collect. Chicago & Illinois Western Railroad charges must be fully prepaid. Charges must be prepaid on cars forwarded from points on Chicago & Illinois Western Railroad to points within Chicago District. (See Rule 25.)
10	Cars Ordered and not Loaded	Empty cars furnished on orders for loading, but not loaded will be charged for at regular tariff rates.
15	Cars Returned to their Lines via Intermediate Roads	On loaded cars received from connecting lines through Belt Railway Company of Chicago, Baltimore & Ohio Chicago Terminal R. R., or Illinois Northern Ry., the charge of those companies for returning the car when empty to connecting line, as published in their Switching Tariffs, lawfully on file with Interstate Commerce Commission and Illinois Commerce Commission must be added to rates shown herein. If empty car is not returned via Belt Railway Company of Chicago, Baltimore & Ohio Chicago Terminal R. R., or Illinois Northern Ry., charge will be refunded through Claim Department.
20	Changes and New Industries	When changes occur in firms, etc., using certain industry tracks, tariff will be corrected as soon as practicable. Until such correction is made, same charge will apply as shown for industry previously using same track. In case of location of new industry, if cars are offered for movement before tariff has been amended, charge to be made will be that shown in tariff for adjoining industry tracks in same district.
25	Definition of Chicago Switching District	See Agent R. A. Sperry's Tariff No. 20-T, I. C. C. No. 242, Ill. C. C. No. 130.
30	Demurrage Charges	All cars handled under this tariff will be subject to demurrage charges as per Agent B. T. Jones' Tariff No. 4-O, I. C. C. No. 2731, Ill. C. C. No. 344.
35	Double or Triple Loaded Cars	When more than one car is required account length or weight of load, such as long timbers, steel, etc., rates shown herein will be collected on each car.
40	Excess Loading	Cars loaded in excess of ten per cent above marked capacity of car, excess will be transferred to another car and will be charged for at carload rate and actual weight; or, entire contents of car will be transferred to a car of greater capacity and charged for at actual weight.
45	Transportation of Explosives and other Dangerous Articles by Freight	Shipping containers, marking and packing requirements for, and handling and transportation of: Explosives and Dangerous Articles other than Explosives, must be in accordance with Rules and Regulations prescribed in Agent B. W. Dunn's Freight Tariff No. 2, I. C. C. No. 2, Ill. C. C. No. 2.
50	Interior Yard Switching	Except as otherwise provided, Interior movements at industries will be made on written orders, for which a charge of $3.15 per car will be made for each movement. Where facilities are provided within yard or plant of an industry receiving and shipping freight in cars which it furnishes, no charge will be made for switching empty cars between railroad's, industrial's or car owner's storage tracks and industrial's or car owner's loading or unloading, storage, shop, inspection, repair or cleaning tracks, or between industrial's or car owner's and between industrial's and car owner's, loading or unloading, storage, shop, inspection, repair or cleaning tracks, or for ascertaining weights for billing purposes. No charge will be made for switching empty cars between industrial tracks and interchange tracks with connecting railroads at plant of industry, including delivery to such railroads.
55	Terminal Services	Shipments transported under this tariff are entitled to such privileges and subject to such charges as are provided herein or by issuing carriers' publications, lawfully on file with Interstate Commerce Commission and Illinois Commerce Commission, providing for car service, demurrage, diversion, reconsignment, storage, switching, terminal services, etc.
60	Loaded Cars Refused	Cars refused by connecting lines or industries will be returned at expense of railroad or industry from which they are received.
65	Minimum Weights	Except as otherwise provided rates published herein will apply on actual weight subject to a minimum weight of 60,000 pounds per car.
70	Reconsigning	This company will accept orders for reconsigning loaded cars that have reached destination on its line, charging $2.70 per car for such reconsignment, in addition to the regular switching charge.

	termediate Roads	rates shown herein. [illegible] more & Ohio Chicago Terminal R. R., or Illinois Northern Ry., charge will be refunded through Claim Department.
20	Changes and New Industries	When changes occur in firms, etc., using certain industry tracks, tariff will be corrected as soon as practicable. Until such correction is made, same charge will apply as shown for industry previously using same track. In case of location of new industry, if cars are offered for movement before tariff has been amended, charge to be made will be that shown in tariff for adjoining industry tracks in same district.
25	Definition of Chicago Switching District	See Agent R. A. Sperry's Tariff No. 20-T, I. C. C. No. 242, Ill. C. C. No. 110.
30	Demurrage Charges	All cars handled under this tariff will be subject to demurrage charges as per Agent B. T. Jones' Tariff No. 4-O, I. C. C. No. 2731, Ill. C. C. No. 344.
35	Double or Triple Loaded Cars	When more than one car is required account length or weight of load, such as long timbers, steel, etc., rates shown herein will be collected on each car.
40	Excess Loading	Cars loaded in excess of ten per cent above marked capacity of car, excess will be transferred to another car and will be charged for at carload rate and actual weight; or, entire contents of car will be transferred to a car of greater capacity and charged for at actual weight.
45	Transportation of Explosives and other Dangerous Articles by Freight	Shipping containers, marking and packing requirements for, and handling and transportation of: Explosives and Dangerous Articles other than Explosives, must be in accordance with Rules and Regulations prescribed in Agent B. W. Dunn's Freight Tariff No. 2, I. C. C. No. 2, Ill. C. C. No. 2.
50	Interior Yard Switching	Except as otherwise provided, Interior movements at industries will be made on written orders, for which a charge of $3.15 per car will be made for each movement. ▲Where facilities are provided within yard or plant of an industry receiving and shipping freight in cars which it furnishes, no charge will be made for switching empty cars between railroad's, industrial's or car owner's storage tracks and industrial's or car owner's loading or unloading, storage, shop, inspection, repair or cleaning tracks, or between industrial's or car owner's (and between industrial's and car owner's) loading or unloading, storage, shop, inspection, repair or cleaning tracks, or for ascertaining weights for billing purposes. No charge will be made for switching empty cars between industrial tracks and interchange tracks with connecting railroads at plant of industry, including delivery to such railroads.
55	Terminal Services	Shipments transported under this tariff are entitled to such privileges and subject to such charges as are provided herein or by issuing carriers' publications, lawfully on file with Interstate Commerce Commission and Illinois Commerce Commission, providing for car service, demurrage, diversion, reconsignment, storage, switching, terminal services, etc.
60	Loaded Cars Refused	Cars refused by connecting lines or industries will be returned at expense of railroad or industry from which they are received.
65	Minimum Weights	Except as otherwise provided rates published herein will apply on actual weight subject to a minimum weight of 60,000 pounds per car.
70	Reconsigning	This company will accept orders for reconsigning loaded cars that have reached destination on its line, charging $2.70 per car for such reconsignment, in addition to the regular switching charge. When diverting orders are received prior to cars reaching this line, change of destination to points on Chicago & Illinois Western Railroad will be made without extra charge.
75	Shipments Billed to Order and Notify	Shipments will not be accepted if billed to order and notify when for local switching within Chicago District, as described in C. W. Galligan's Tariff 21-A, I. C. C. 283, Ill. C. C. No. 132
80	Special Service	When ordered, special service will be furnished at $11.00 per engine hour, subject to a minimum of $22.50 in addition to regular tariff rates applicable on individual cars

▲Reduction.

RULES AND REGULATIONS—Continued.

Rule No.	SUBJECT	RULES—Continued
	Terminal Allowance	(a) On all carload revenue shipments destined to or coming from plant of Chicago By-Products Coke Company, terminal switching is performed by Chicago By-Products Coke Company for account of Chicago & Illinois Western Railroad. Chicago By-Products Coke Company will be allowed for such service out of current rate to or from their plant, actual cost of service performed, as specified in monthly bills submitted to this railroad, on all cars handled between points of interchange with this railroad and first point at which cars are loaded or unloaded, subject to a maximum allowance of $1.85 per car. The above allowance includes handling of empty cars in reverse direction or empty cars handled preparatory to loading. (b) On all carload revenue shipments destined to or coming from plant of Commonwealth Edison Company (Crawford Avenue Plant) terminal switching is performed by Commonwealth Edison Company for account of Chicago & Illinois Western Railroad. Commonwealth Edison Company (Crawford Avenue Plant) will be allowed for such service out of current rate to or from their plant $1.07 per loaded car, on all cars handled between points of interchange with this railroad and first point at which cars are loaded or unloaded. The above allowance includes handling of empty cars in reverse direction or empty cars handled preparatory to loading. (GF121-Chicago-Commonwealth Edison).
90	**Distance Rates**	When rates are not shown in this tariff for exact distance, rates published for next greater distance will apply.
95	**Minimum Charges**	Minimum charge for a carload shipment shall be (1)eighteen dollars.
100	**Furnishing Tank Cars**	Ratings provided for freight in tank cars do not obligate carriers to furnish tank cars. If carriers' tank cars are voluntarily furnished, interior cleaning, if necessary must be performed by and at expense of shipper. (GF-120-Chicago-Tank Cars.)
105	**Open and Prepay Stations**	Governed by Agent F. A. Leland's Open and Prepay Stations List No. 49, I. C. C. No. A-14, I. C. R. R. Circular No. 311-X, as to billing requirements, changes in names of stations, additions and abandonment of stations, billing instructions from or to points not on railroads, restrictions as to nonacceptance or nondelivery of freight and changes in station facilities, except as otherwise shown herein.
110	**Reference to Tariffs, Items, Notes, Rules, Etc.**	Where cross reference is made in this tariff to tariffs, items, notes, rules, etc., such references are continuous, and include supplements to or successive issues of such tariffs; also successive issues of such items, notes, rules, etc.
115	**Section 2 Rates Not to Alternate with other Commodity Rates**	The rates in Section 2 are specific commodity rates and do not alternate with commodity rates in other sections of the tariff, except as indicated under application of that section.
120	**Empty Tank Cars of Private Ownership**	(a) Tank cars of private ownership will be moved empty without charge at time movement is made between stations or between stations and junction points on C. & I. W. R. R., including delivery to connecting lines. (b) Should aggregate empty movement of any owner's cars on June 30th of each year or at close of any such yearly period that may be mutually agreed upon, exceed aggregate loaded movement of such cars, such excess must be paid for by owner, either by an equivalent number of loaded movements during succeeding six months, or at charge of $2.70 per car for excess empty movements. Any excess of loaded movements over empty movements of any owner's cars at end of accounting period will be continued as a credit against empty movements of such cars for ensuing twelve months. (c) Private car owners must assume responsibility for any excess movement resulting from improper delivery of their cars by connecting lines. (d) Regular tariff rate will be charged for new cars or newly acquired cars moving empty to home or loading point by order of owner.

	For Rules and Regulations Relating to	Refer to	Issued by	I. C. C. No.	Ill. C. C. No.
125	**Capacity and Dimensions. Cars:**				
	Other than tank	Railway Equipment Register.	G. P. Conard	R. F. R. 241	R. E. R. 241

		Commonwealth Edison Company (Crawford Avenue Plant) will be allowed for such service out of current rate to or from their plant $1.07 per loaded car, on all cars handled between points of interchange with this railroad and first point at which cars are loaded or unloaded. The above allowance includes handling of empty cars in reverse direction or empty cars handled preparatory to loading. (GF121-Chicago-Commonwealth Edison).
90	**Distance Rates**	When rates are not shown in this tariff for exact distance, rates published for next greater distance will apply.
95	**Minimum Charges**	Minimum charge for a carload shipment shall be ①eighteen dollars.
100	**Furnishing Tank Cars**	Ratings provided for freight in tank cars do not obligate carriers to furnish tank cars. If carriers' tank cars are voluntarily furnished, interior cleaning, if necessary must be performed by and at expense of shipper. (GF-120-Chicago-Tank Cars.)
105	**Open and Prepay Stations**	Governed by Agent F. A. Leland's Open and Prepay Stations List No. 49, I. C. C. No. A-14, I. C. R. R. Circular No. 311-X, as to billing requirements, changes in names of stations, additions and abandonment of stations, billing instructions from or to points not on railroads, restrictions as to nonacceptance or nondelivery of freight and changes in station facilities, except as otherwise shown herein.
110	**Reference to Tariffs, Items, Notes, Rules, Etc.**	Where cross reference is made in this tariff to tariffs, items, notes, rules, etc., such references are continuous, and include supplements to or successive issues of such tariffs; also successive issues of such items, notes, rules, etc.
115	**Section 2 Rates Not to Alternate with other Commodity Rates**	The rates in Section 2 are specific commodity rates and do not alternate with commodity rates in other sections of the tariff, except as indicated under application of that section.
120	**Empty Tank Cars of Private Ownership**	(a) Tank cars of private ownership will be moved empty without charge at time movement is made between stations or between stations and junction points on C. & I. W. R. R., including delivery to connecting lines. (b) Should aggregate empty movement of any owner's cars on June 30th of each year or at close of any such yearly period that may be mutually agreed upon, exceed aggregate loaded movement of such cars, such excess must be paid for by owner, either by an equivalent number of loaded movements during succeeding six months, or at charge of $2.70 per car for excess empty movements. Any excess of loaded movements over empty movements of any owner's cars at end of accounting period will be continued as a credit against empty movements of such cars for ensuing twelve months. (c) Private car owners must assume responsibility for any excess movement resulting from improper delivery of their cars by connecting lines. (d) Regular tariff rate will be charged for new cars or newly acquired cars moving empty to home or loading point by order of owner.

	For Rules and Regulations Relating to	Refer to	Issued by	I. C. C. No.	Ill. C. C. No.
125	**Capacity and Dimensions.**				
	Cars:				
	Other than tank	Railway Equipment Register.	G. P. Conard	R. E. R. 241	R. E. R. 241
	Tank	Tank Car Circular	E. B. Boyd	A-2518	229
	Mileages	Table of Mileages	C. & I. W. R. R	120-A	15

① Issued in compliance with order of Interstate Commerce Commission in Docket 19810 of July 3, 1933.

SECTION 1

CLASS RATES
Between Stations on the Chicago & Illinois Western R. R.
In Cents per 100 Pounds

DISTANCE IN MILES	CLASSES											
	1	2	3	4	5	A	B	C	D	E	Rule 25	Rule 26
5 miles and under	*Cancel. Carload freight only handled. For rates see Sections 2 and 3.											
10 miles and over 5												
15 miles and over 10												

SECTION 2

When rates are published in this Section on the commodity transported from point of origin to destination, rates named in this section will apply regardless of rates between the same points published in other sections.

Item No. 200 — **LOCAL RATES**

BETWEEN	AND	COMMODITIES		Rates in Cents per 100 Pounds (Except as Noted)
C. & I. W. R. R.	C. & I. W. R. R.	Railway Equipment on own wheels, viz		
Chicago Ill.	Chicago Ill	Empty Freight Cars, each		$2 70
Crawford " (Formerly Hawthorne, Ill.)	Crawford " (Formerly Hawthorne, Ill.)	Baggage Cars	Each	$0 50
Hodgkins " (Formerly Gary)	Hodgkins " (Formerly Gary)	Caboose Cars		
McCook "	McCook "	Dining Cars	Each	$0 50
Western Avenue "	Western Avenue "	Express Cars		
		Locomotives (dead or under steam), and Tenders, 50% of actual weight, minimum 60,000 pounds		2
		Locomotive Tenders		2
		Mail Cars		
		Passenger Coaches	Each	$0 50
		Sleeping Cars		

Item No. 206 — **PROPORTIONAL RATES**

BETWEEN	AND Connection with connecting lines shown below direct.	Junction Points	Commodities	Rates in Cents per 100 Pounds (Except as Noted) A	B
	Atchison, Topeka & Santa Fe Ry Baltimore & Ohio Chicago Term. R. R Indiana Harbor Belt R. R	McCook Ill	Coal, per ton of 2,000 pounds	38	19
	Belt Railway Co Chicago, Burlington & Quincy R. R Illinois Central R. R Manufacturers Junction Ry	Crawford Ill	Crushed Stone	27	27
			Sand and Gravel	27	19
			Ice, per ton of 2,000 pounds	25	19
			Railway Equipment on own wheels, viz		
			Empty Freight Cars, each	$2 70	$1 80
			Baggage Cars		
			Ballast Spreaders		
			Caboose Cars		
			Dining Cars		
			Express Cars		
			Mail Cars Each	$0 50	$7 65
			Passenger Coaches		
			Sleeping Cars		
			Steam Shovels		
Chicago Ill Crawford " Hodgkins " McCook " Western Ave "	Illinois Northern Ry Pennsylvania Railroad Company				

SECTION 2

When rates are published in this Section on the commodity transported from point of origin to destination, rates named in this section will apply regardless of rates between the same points published in other sections.

Item No. 200 — **LOCAL RATES**

BETWEEN	AND	COMMODITIES	Rates in Cents per 100 Pounds (Except as Noted)
C. & I. W. R. R.	**C. & I. W. R. R.**	Railway Equipment on own wheels, viz.:	
		Empty Freight Cars, each	$2 70
Chicago Ill.	Chicago Ill.	Baggage Cars, Each	$9 50
Crawford " (Formerly Hawthorne, Ill.)	Crawford " (Formerly Hawthorne, Ill.)	Caboose Cars	
		Dining Cars, Each	$9 50
Hodgkins " (Formerly Gary)	Hodgkins " (Formerly Gary)	Express Cars	
		Locomotives (dead or under steam), and Tenders, 50% of actual weight, minimum 60,000 pounds	2
McCook "	McCook "	Locomotive Tenders	2
Western Avenue "	Western Avenue "	Mail Cars	
		Passenger Coaches, Each	$9 50
		Sleeping Cars	

Item No. 205 — **PROPORTIONAL RATES**

BETWEEN	AND Connection with connecting lines shown below direct.	Junction Points	Commodities	Rates in Cents per 100 Pounds (Except as Noted) A	B
	Atchison, Topeka & Santa Fe Ry. Baltimore & Ohio Chicago Term. R. R. Indiana Harbor Belt R. R.	McCook Ill.	Coal, per ton of 2,000 pounds	38	19
			Crushed Stone	2½	2½
			Sand and Gravel	2½	2½
			Ice, per ton of 2,000 pounds	25	19
			Railway Equipment on own wheels, viz		
			Empty Freight Cars, each	$2 70	$1 80
			Baggage Cars		
			Ballast Spreaders		
			Caboose Cars		
			Dining Cars		
			Express Cars		
Chicago Ill.			Mail Cars, Each	$9 50	$7 65
Crawford "			Passenger Coaches		
Hodgkins "			Sleeping Cars		
McCook "			Steam Shovels		
Western Ave "			Steam Derricks		
			Snow Plows		
			Locomotives, Locomotive Tenders, and Tenders coupled (dead or under steam) 50% of actual weight, minimum 60,000 pounds	2	1½
			All other Freight	2	1½
	Belt Railway Co. Chicago, Burlington & Quincy R. R. Illinois Central R. R. Manufacturers Junction Ry.	Crawford Ill.			
	Illinois Northern Ry. Pennsylvania Railroad Company Lines Pittsburgh, Pa., Oil City, Pa., and West Chicago Junction Ry. Chicago River & Indiana R. R.	Western Avenue Ill.			
	All railroads via Chicago, Ill., when delivery is made direct to that road				

A When point of origin and destination are within Chicago Switching District
B When point of origin or destination is outside Chicago Switching District
Chicago Switching District, definition of, see page 3.
When pilot is necessary an additional charge of $5.00 will be made to cover service of pilot.
*Change which results in neither increase nor reduction in charges.

SECTION 2—Continued

JOINT PROPORTIONAL RATES

Item No. 210.

Between (except as noted)

Chicago	**Ill.**	**McCook**	**Ill.**
Crawford	**Ill.**	**Western Ave.**	**Ill.**
Hodgkins (Formerly Gary)	**Ill.**		

AND

Junction of Intermediate Carriers named in Column Two below with Railroad named in Column One below, such junctions being within Chicago Switching District:

Column One	Column Two	Rates
Alton R. R	B.Ry. of C.; B.& O.C.T.R.R.; I.N.Ry.	
Atchison, Topeka & Santa Fe Ry	B.Ry. of C.; B.& O.C.T.R.R.; I.N.Ry.	
Baltimore & Ohio R. R	B.Ry. of C.; B.& O.C.T.R.R.	
Baltimore & Ohio Chicago Terminal R. R	B.Ry. of C.	
Belt Ry. of Chicago	I.N.Ry.	
Chesapeake and Ohio Ry. of Indiana	B.Ry. of C.; B.& O.C.T.R.R.	
Chicago & Calumet River R. R	B.& O.C.T.R.R.	
Chicago & Eastern Illinois R. R	B.Ry. of C.; B.& O.C.T.R.R.	
Chicago & Erie R. R	B.Ry. of C.; B.& O.C.T.R.R.	
Chicago & Illinois Western R. R	B.Ry. of C.; I.N.Ry.	
Chicago & North Western Ry	B.Ry. of C.; B.&O.C.T.R.R.; I.N.Ry.	(1)All Freight, when point of origin and destination are within (6)Chicago Switching District, (6)2 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago & Western Indiana R. R	B.Ry. of C.	
Chicago, Aurora & Elgin R. R	B.&O.C.T.R.R.	
Chicago, Burlington & Quincy R. R	B.Ry. of C.; I.N.Ry.	
Chicago Great Western R. R	B.Ry. of C.; B.& O.C.T.R.R.	
Chicago, Indianapolis & Louisville Ry	B.Ry. of C.; B.& O.C.T.R.R.	
Chicago, Indiana Southern R. R	B.Ry. of C	
Chicago Junction Ry	I.N.Ry.	(2)All Freight, when point of origin or destination is outside (6)Chicago Switching District, 1½ cents per 100 pounds, minimum through rate 4 cents per 100 pounds, origin to destination. (See Note 1.)
Chicago, Milwaukee, St. Paul & Pacific R. R.	B.Ry. of C.; I.N.Ry.	
C.M.St.P.& P.R.R. (Terre Haute Division	B.& O.C.T.R.R.	
Chicago River & Indiana R. R	B.Ry. of C.; I.N.Ry.	
Chicago, Rock Island & Pacific Ry	B.Ry. of C.; B.& O.C.T.R.R.	
Chicago Short Line Ry	B.Ry. of C.; B.& O.C.T.R.R.	
Chicago, South Shore & South Bend R. R	B.Ry. of C.; B.&O.C.T.R.R.	
Chicago, West Pullman & Southern Ry	B.Ry. of C.	
Cleveland, Cincinnati, Chicago & St. Louis Ry	B.Ry. of C.; I.N.Ry.	
Elgin, Joliet & Eastern Ry. (see Note 2 below)	B.Ry. of C.; B.& O.C.T.R.R.	(Note 1) On shipments handled on combination of separately established rates, minimum rate herein provided does not apply to separate factors, but to total of combined factors.
Erie R. R	B.Ry.of C., B.&O.C.T.R.R	
Grand Trunk Ry	B.Ry. of C.; B.&O.C.T.R.R.; I.N.Ry.	
Illinois Central R. R	B.Ry. of C.; B.&O.C.T.R.R.; I.N.Ry.	
Illinois Northern Ry	B.Ry. of C.	
Indiana Harbor Belt R. R	B.Ry. of C.; I.N.Ry	
Manufacturers Junction Ry	B.Ry. of C	
Michigan Central R. R	B.Ry. of C.	
Minneapolis, St. Paul & Sault Ste. Marie Ry	B.Ry. of C.; B.&O.C.T.R.R.; I.N.Ry.	
New York Central R. R	B.Ry. of C.; B.& O.C.T.R.R.	
New York, Chicago & St. Louis R. R	B.Ry. of C.; B.& O.C.T.R.R.	
Pennsylvania R. R	B.Ry. of C.; B.& O.C.T.R.R.	
Pennsylvania Railroad Company (Lines Pittsburgh, Pa., Oil City, Pa., Erie, Pa., and West)	B.Ry. of C.; B.&O.C.T.R.R.; I.N.Ry.	
Pere Marquette R. R	B.Ry. of C.; B.& O.C.T.R.R.	
Pullman R. R	B.Ry. of C	
Wabash Ry	B.Ry. of C.; B.& O.C.T.R.R.	

(6) Exceptions.

Railway Equipment on own wheels, viz.:

Freight Cars

Sleeping Cars

Atchison, Topeka & Santa Fe Ry	B.Ry. of C.; B.& O.C.T.R.R.	
Baltimore & Ohio R. R	B.Ry. of C.	
Baltimore & Ohio Chicago Terminal R. R	I.N.Ry.	
Belt Ry. of Chicago	B.Ry. of C.; B.& O.C.T.R.R.	
Chesapeake and Ohio Ry. of Indiana		
Chicago & Calumet River R. R	B.& O.C.T.R.R.	
Chicago & Eastern Illinois R. R	B.Ry. of C.; B.& O.C.T.R.R.	
Chicago & Erie R. R	B.Ry. of C.; B.& O.C.T.R.R	
Chicago & Illinois Western R. R	B.Ry. of C.; I.N.Ry.	
Chicago & North Western Ry	B.Ry. of C.; B.&O.C.T.R.R.; I.N.Ry.	①All Freight, when point of origin and destination are within ⑧Chicago Switching District, ⑥2 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago & Western Indiana R. R	B.Ry. of C	
Chicago, Aurora & Elgin R. R	B.&O.C.T.R.R.	
Chicago, Burlington & Quincy R. R	B.Ry. of C.; I.N.Ry.	
Chicago Great Western R. R	B.Ry. of C.; B.& O.C.T.R.R.	
Chicago, Indianapolis & Louisville Ry	B.Ry. of C.; B.& O.C.T.R.R.	
Chicago, Indiana Southern R. R	B.Ry. of C	①All Freight, when point of origin or destination is outside ⑧Chicago Switching District, 1½ cents per 100 pounds, minimum through rate 4 cents per 100 pounds, origin to destination. (See Note 1.)
Chicago Junction Ry	I.N.Ry.	
Chicago, Milwaukee, St. Paul & Pacific R. R.	B.Ry. of C.; I.N.Ry.	
C.M.St.P.& P.R.R. (Terre Haute Division	B.& O.C.T.R.R.	
Chicago River & Indiana R. R	B.Ry. of C.; I.N.Ry.	
Chicago, Rock Island & Pacific Ry	B.Ry. of C.; B.& O.C.T.R.R.	
Chicago Short Line Ry	B.Ry. of C.; B.& O.C.T.R.R.	
Chicago, South Shore & South Bend R. R	B.Ry. of C.; B.&O.C.T.R.R	
Chicago, West Pullman & Southern Ry	B.Ry. of C.	
Cleveland, Cincinnati, Chicago & St. Louis Ry	B.Ry. of C.; I.N.Ry.	(Note 1) On shipments handled on combination of separately established rates, minimum rate herein provided does not apply to separate factors, but to total of combined factors.
Elgin, Joliet & Eastern Ry. (see Note 2 below)	B.Ry. of C.; B.& O.C.T.R.R.	
Erie R. R	B.Ry. of C., B.&O.C.T.R.R	
Grand Trunk Ry	B.Ry. of C.; B.&O.C.T.R.R.; I.N.Ry.	
Illinois Central R. R	B.Ry. of C.; B.&O.C.T.R.R.; I.N.Ry.	
Illinois Northern Ry	B.Ry. of C.	
Indiana Harbor Belt R. R	B.Ry. of C.; I.N.Ry	
Manufacturers Junction Ry	B.Ry. of C	
Michigan Central R. R	B.Ry. of C.	
Minneapolis, St. Paul & Sault Ste. Marie Ry	B.Ry. of C.; B.&O.C.T.R.R.; I.N.Ry.	
New York Central R. R	B.Ry. of C.; B.& O.C.T.R.R.	
New York, Chicago & St. Louis R. R	B.Ry. of C.; B.& O.C.T.R.R.	
Pennsylvania R. R	B.Ry. of C.; B.& O.C.T.R.R.	
Pennsylvania Railroad Company (Lines Pittsburgh, Pa., Oil City, Pa., Erie, Pa., and West)	B.Ry. of C.; B.&O.C.T.R.R.; I.N.Ry.	
Pere Marquette R. R	B.Ry. of C.; B.& O.C.T.R.R.	
Pullman R. R	B.Ry. of C	
Wabash Ry	B.Ry. of C.; B.& O.C.T.R.R.	

⑥ Exceptions.
Baggage Cars,
Dining Cars,
Express or Mail Cars,
Railway Equipment on own wheels, viz.:
Freight Cars
Locomotives or Tenders,
Passenger Coaches,
Sleeping Cars,
Tank Cars

For rates on these commodities, see tariffs of Individual Carriers lawfully on file with Interstate Commerce Commission (on Interstate traffic) and with various State Commissions (on Intrastate traffic).

⑧ Chicago Switching District, Definition of, refer to page 5.

* Issued in compliance with order of Interstate Commerce Commission in Docket No. 19610, of July 3, 1933.

Note 2.- Rates in connection with Elgin, Joliet & Eastern Ry. apply to but not from points on that line.

SECTION 2—Continued
INTERCHANGE RATES.

Rates per car, shown below (except as noted) cover interchange of carload traffic between connections of Chicago & Illinois Western Railroad.

Item No. 215

CONNECTIONS	Junction Points	COMMODITY		RATES A	RATES B
		Crushed Stone Sand and Gravel	per car	$4 95	$3 60
		Loaded Freight Cars, except as noted, per car		$4 95	$3 60
		Railway Equipment on own wheels, viz.: Empty Freight Cars, each		$2 70	$1 80
Atchison, Topeka & Santa Fe Ry	McCook Ill.	Baggage Cars Ballast Spreaders Caboose Cars Dining Cars Express Cars Mail Cars Passenger Coaches Sleeping Cars Steam Shovels Steam Derricks Snow Plows	Each	$9 50	$7 65
Indiana Harbor Belt R. R.	McCook "				
Belt Railway Co. of Chicago	Crawford "				
Chicago, Burlington & Quincy R. R.	Crawford "				
Illinois Central R. R.	Crawford "				
Manufacturers Junction Ry	Crawford "				
Illinois Northern Ry	Western Avenue "				
Chicago Junction Ry	Western Avenue "				
Chicago River & Indiana R. R.	Western Avenue "				
Pennsylvania Lines (Pittsburgh, Pa., Oil City, Pa., Erie, Pa., and West)	Western Avenue "	Locomotives Locomotive cranes and wrecking outfits, dead or condemned	50% of actual weight, minimum 60,000 lbs., in cents per 100 lbs.	(6)2	(6)1½

MISCELLANEOUS COMMODITY RATES
In Cents per 100 Pounds Unless Otherwise Specified

Item No.	APPLYING ON	BETWEEN (Except as noted)	AND (Except as noted)	RATES
(1)220	Crude Tar, Water Gas Tar in privately owned tank cars. (I. C. C. Docket 19610)	FROM Plant of Chicago By-Product Coke Co. on Chicago and Illinois Western R. R.	TO Plant of American Tar Products Co. on Chicago and Illinois Western R. R.	$12 00 per car
225	All Freight. Carloads, minimum weight 60,000 pounds.	Crawford Ill. Hodgkins " McCook "	Stations on Chicago, West Pullman & Southern Railroad.	(6) 3 5
230	All Freight. Carloads, minimum weight 60,000 pounds.	Crawford Ill. Hodgkins " McCook "	McCormick Ill. On Illinois Northern Ry.	(1)(6) 3 5 (2)(6)(6)3 5
235	All Freight. Carloads, minimum weight 60,000 pounds.	Crawford Ill. Hodgkins " McCook "	Stations on Pullman R. R.	(1)(6) 4 (2)(6)(6)4
240	All Freight. Carloads, minimum weight 60,000 pounds.	FROM Industries, Side Tracks on Chicago & Illinois Western R. R. and connections with other Railroads.	TO Industries, Side Tracks on Chicago & Illinois Western R. R. and connections with other Railroads.	3
245	Less than carload traffic.	Industries located on Chicago & Illinois Western R. R.	Junction with Manufacturers Junction Ry. at Crawford, Ill.	$5 00 per car
(1)250	Flux Stone. Carloads, minimum weight 60,000 pounds. **Rates in cents per ton of 2,000 pounds.**	FROM McCook Ill. Hodgkins "	TO Kewaunee Ill.	113

Chicago, Burlington & Quincy R. R.	[illegible]	"	Express Cars	Each	$9 50	$7 65
Illinois Central R. R.	Crawford	"	Mail Cars			
Manufacturers Junction Ry	Crawford	"	Passenger Coaches			
Illinois Northern Ry	Western Avenue	"	Sleeping Cars			
Chicago Junction Ry	Western Avenue	"	Steam Shovels			
Chicago River & Indiana R. R.	Western Avenue	"	Steam Derricks			
Pennsylvania Lines (Pittsburgh, Pa., Oil City, Pa., Erie, Pa., and West)	Western Avenue	"	Snow Plows Locomotive Locomotive [illegible] Locomotive [illegible] and tenders, [illegible] dead or [illegible] other cars	50% of actual weight, minimum 60,000 lbs., in cents per 100 lbs.	(e)2	(e)14

MISCELLANEOUS COMMODITY RATES
In Cents per 100 Pounds Unless Otherwise Specified

Item No.	APPLYING ON	BETWEEN (Except as noted)	AND (Except as noted)	RATES
(1)220	Crude Tar, Water Gas Tar in privately owned tank cars. (I. C. C. Docket 19610)	FROM Plant of Chicago By-Product Coke Co. on Chicago and Illinois Western R. R.	TO Plant of American Tar Products Co. on Chicago and Illinois Western R. R.	$12 00 per car
225	All Freight. Carloads, minimum weight 60,000 pounds.	Crawford Ill. Hodgkins " McCook "	Stations on Chicago, West Pullman & Southern Railroad.	(3) (4) 3 5
230	All Freight. Carloads, minimum weight 60,000 pounds.	Crawford Ill. Hodgkins " McCook "	McCormick Ill. On Illinois Northern Ry.	(1) (4) 3 5 (2) (5) (6) 3 5
235	All Freight. Carloads, minimum weight 60,000 pounds.	Crawford Ill. Hodgkins " McCook "	Stations on Pullman R. R.	(1) (3) 4 (2) (5) (6) 4
240	All Freight. Carloads, minimum weight 60,000 pounds.	FROM Industries, Side Tracks on Chicago & Illinois Western R. R. and connections with other Railroads.	TO Industries, Side Tracks on Chicago & Illinois Western R. R. and connections with other Railroads.	3
245	Less than carload traffic.	Industries located on Chicago & Illinois Western R. R.	Junction with Manufacturers Junction Ry. at Crawford, Ill.	$5 00 per car
(1)250	Flux Stone. Carloads, minimum weight 60,000 pounds. Rates in cents per ton of 2,000 pounds.	FROM McCook Ill. Hodgkins "	TO Kewanee Ill.	113
(1)255	(8)Plant Refuse of no commercial value to shipper and Refuse Waste Material and Excavated Material of no commercial value to shipper, straight or mixed carloads. (8T-5257-385)	FROM Crawford Ill. ‡Hawthorne " Hodgkins " McCook "	TO Crawford Ill. Hawthorne " Hodgkins " McCook "	$7 50 per car

A—When point of origin and destination are within 7 Chicago Switching District.
B—When point of origin or destination is outside 7 Chicago Switching District.
1 Applies on Illinois Intrastate Traffic only. 4 Applies on Interstate Traffic only.
2 Not applicable between industries on C. & I. W. R. R. and Industries on connecting lines within Chicago Switching District as described in Agent C. W. Galligan's Tariff No. 248, I. C. C. No. 182, Ill. C. C. No. 81. For rates to apply, refer to Agent C. W. Galligan's Tariff No. 21-P, I. C. C. No. 264, Ill. C. C. No. 122.
3 Issued in compliance with order of Interstate Commerce Commission in Docket 19610, of July 3, 1933.
5 Shipper will be required to certify on Bill of Lading that shipment is of no commercial value to him.
6 Issued in compliance with order of Interstate Commerce Commission in Docket 19610, of July 31, 1931.
7 Chicago Switching District, Definition of, refer to page 3.
8 When pilot is necessary, an additional charge of $5.00 will be made to cover service of pilot.
‡Reduction

SECTION 2—Concluded

MISCELLANEOUS COMMODITY RATES

In Cents per 100 Pounds Unless Otherwise Specified

Item No.	APPLYING ON	BETWEEN (Except as noted)	AND (Except as noted)	RATES
		FROM	**TO**	
260	Railway Company Material. Carloads, minimum weight 60,000 pounds. **Rates in cents per ton of 2,000 pounds.**	Hodgkins Ill. McCook "	Connecting lines at McCook, Ill., viz.: A. T. & S. F. Ry. B. & O. C. T. R. R. I. H. B. R. R. Connecting lines at Hawthorne, Ill., viz.: Belt Ry. of Chicago C. B. & Q. R. R. I. C. R. R.	(4)60
		FROM	**TO**	
265	Stone, Crushed, Rip Rap, Black Dirt and Cinders, carloads, minimum weight capacity of car. **Rates in cents per ton of 2,000 pounds.**	Crawford Ill. Hodgkins " McCook "	Team tracks of Illinois Central Railroad at Chicago, 26th Street and south, Also Blue Island, Burnside, Grand Crossing, Harvey, Homewood, Kensington, Riverdale, South Chicago, West Pullman, Windsor Park.	(4)70
270			**TO** Team tracks of Illinois Central Railroad at Chicago, north of 26th Street, Also Berwyn, Bridgeport, Broadview, Forest Park, Hawthorne.	(4)70
275			**TO** Tracks serving Stadium Site near 15th Street and Lake Front, Chicago.	(4)70

SECTION 3

Where rates are published in Section 2 the rates named in this Section on the same commodity from and to the same points via the same route will not apply.

COMMODITY RATES

Between Stations on Chicago & Illinois Western R. R.

ITEM No.	IN CENTS PER 100 POUNDS		
	300	305	310
DISTANCES IN MILES	**Bran, shipstuff and shorts, in sacks, in lots of 2,000 pounds or over.**	**Feed, chopped or ground, in sacks, in lots of 2,000 pounds or over.**	**Flour, in barrels or sacks, in lots of 2,000 pounds or over.**
2 miles and under	6	6	6
4 miles and over 2	6½	6½	6½
5 miles and over 4	7½	7½	7½
6 miles and over 5	7½	7½	7½
10 miles and over 6			

			I. C. R. R.	
265	Stone, Crushed, Rip Rap, Black Dirt and Cinders, carloads, minimum weight capacity of car. **Rates in cents per ton of 2,000 pounds.**	**FROM** Crawford Ill. Hodgkins " McCook "	**TO** Team tracks of Illinois Central Railroad at Chicago, 26th Street and south, Also Blue Island, Burnside, Grand Crossing, Harvey, Homewood, Kensington, Riverdale, South Chicago, West Pullman, Windsor Park.	①70
270			**TO** Team tracks of Illinois Central Railroad at Chicago, north of 26th Street, Also Berwyn, Bridgeport, Broadview, Forest Park, Hawthorne.	①70
275			**TO** Tracks serving Stadium Site near 15th Street and Lake Front, Chicago.	①70

SECTION 3

Where rates are published in Section 2 the rates named in this Section on the same commodity from and to the same points via the same route will not apply.

COMMODITY RATES

Between Stations on Chicago & Illinois Western R. R.

ITEM No.[1] / DISTANCES IN MILES	IN CENTS PER 100 POUNDS		
	300	305	310
	Bran, shipstuff and shorts, in sacks, in lots of 2,000 pounds or over.	**Feed, chopped or ground, in sacks, in lots of 2,000 pounds or over.**	**Flour, in barrels or sacks, in lots of 2,000 pounds or over.**
2 miles and under	6	6	6
4 miles and over 2	6½	6½	6½
5 miles and over 4	7½	7½	7½
6 miles and over 5	7½	7½	7½
10 miles and over 6	8	8	8
15 miles and over 10	9	9	9

[1] Issued in compliance with order of Interstate Commerce Commission in Docket 19610, of July 3, 1933.

Supplement No. 4 to
Ill. C. C. No. 21-A
Cancels Supplement No. 3.
Supplements Nos. ①1 and 4 contain all changes from original tariff effective on date hereof.

Supplement No. 4 to
I. C. C. No. 125-A
Cancels Supplement No. 3.
Supplements Nos. ①1 and 4 contain all changes from original tariff effective on date hereof.

CHICAGO & ILLINOIS WESTERN RAILROAD

IN CONNECTION WITH

PARTICIPATING CARRIERS AS SHOWN IN TARIFF

SUPPLEMENT No. 4 TO G. F. D. 520-E

Cancels Supplement No. 3.

Supplements Nos. ①1 and 4 contain all changes from original tariff effective on date hereof.

SUPPLEMENT TO

FREIGHT TARIFF

—OF—

Stamp here date received

Local, Joint and Proportional Rates

APPLYING ON

COMMODITIES

Between Stations in State of Illinois

—ALSO—

RULES GOVERNING HANDLING OF

CARLOAD FREIGHT

—AT AND BETWEEN—

Stations on the Chicago & Illinois Western R. R.

—ALSO BETWEEN—

Stations Named Herein

—AND—

Junctions and Connecting Lines, and Between Connections

Governed (except as otherwise provided herein) by Illinois Freight Classification No. 18, R. A. Sperry's I. C. C. No. 317, Ill. C. C. No. 149, supplements thereto or successive issues thereof.

Except as otherwise provided, charges resulting from the rates in this supplement are subject to the provisions of Agent R. A. Sperry's Tariff of Emergency Charges No. 67-A, I. C. C. No. 311, Ill. C. C. No. 148, supplements thereto or successive issues thereof.

Supplements Nos. ⓪1 and 4 contain all changes from original tariff effective on date hereof.

SUPPLEMENT TO

FREIGHT TARIFF

—— OF ——

Local, Joint and Proportional Rates

APPLYING ON

COMMODITIES

Between Stations in State of Illinois

——ALSO——

RULES GOVERNING HANDLING OF

CARLOAD FREIGHT

——AT AND BETWEEN——

Stations on the Chicago & Illinois Western R. R.

——ALSO BETWEEN——

Stations Named Herein

——AND——

Junctions and Connecting Lines, and Between Connections

Governed (except as otherwise provided herein) by Illinois Freight Classification No. 18, R. A. Sperry's I. C. C. No. 317, Ill. C. C. No. 149, supplements thereto or successive issues thereof.

Except as otherwise provided, charges resulting from the rates in this supplement are subject to the provisions of Agent R. A. Sperry's Tariff of Emergency Charges No. 67-A, I. C. C. No. 311, Ill. C. C. No. 148, supplements thereto or successive issues thereof.

ISSUED APRIL 16, 1936.

EFFECTIVE MAY 18, 1936.
(Except as otherwise provided herein.)

(Special Supplement of Emergency Charges. (Ex Parte 115).

Issued by
W. F. EBERHARDT
Traffic Manager
135 East Eleventh Place,
CHICAGO, ILL.

(3)Amends page 5 of tariff.

LIST OF INDUSTRIES LOCATED ON CHICAGO & ILLINOIS WESTERN R. R.

NAME	LOCATION	NAME	LOCATION
CANCEL:		ADD:	
(6)American Tar Products Co	Crawford, Ill.	Consolidated Co*	McCook, Ill.
		Herlihy Mid-Continent Construction Co	Crawford, Ill.
		Koppers Products Co	Crawford, Ill.

RULES AND REGULATIONS

Rule No.	SUBJECT	RULES
85 Cancels 85 of Tariff	Terminal Allowance	(a) On all carload revenue shipments destined to or coming from plant of Chicago By-Products Coke Company, terminal switching is performed by Chicago By-Products Coke Company for account of Chicago & Illinois Western Railroad. Chicago By-Products Coke Company will be allowed for such service out of current rate to or from their plant, actual cost of service performed, as specified in monthly bills submitted to this railroad, on all cars handled between points of interchange with this railroad and first point at which cars are loaded or unloaded, subject to a maximum allowance of $1.85 per car. The above allowance includes handling of empty cars in reverse direction or empty cars handled preparatory to loading. (b) ϕCancel. Allowance to Commonwealth Edison Company (Crawford Avenue Plant) discontinued. Published in compliance with order of Interstate Commerce Commission in Ex Parte 104, 49th Supplemental Report, of April 1, 1936.
90 Cancels 90 of Tariff	Distance Rates	*Cancel. Tariff, as amended, does not contain distance rates. (X. [illegible]FD-520.)

SECTION 2

When rates are published in this Section on the commodity transported from point of origin to destination, rates named in this section will apply regardless of rates between the same points published in other sections.

(1)Item No. 206-A cancels 206.

PROPORTIONAL RATES

BETWEEN	AND Connection with connecting lines shown below direct	Junction Points	Commodities	Rates in Cents per 100 Pounds (Except as Noted) A	B
Chicago Ill Crawford - Hodgkins - McCook - Western Ave -	Alton R. R. Atchison, Topeka & Santa Fe Ry Baltimore & Ohio Chicago Term R. R Indiana Harbor Belt R. R	McCook Ill.	Coal, per ton of 2,000 pounds	38	19
			Crushed Stone Sand and Gravel	24	24
			Ice, per ton of 2,000 pounds	25	19
			Railway Equipment on own wheels, viz.:		
			Empty Freight Cars, each	$2 70	$1 80
			Baggage Cars Ballast Spreaders Caboose Cars Dining Cars Express Cars. Mail Cars Passenger Coaches Sleeping Cars Steam Shovels Steam Derricks	Each $9 50	$7 65
	Belt Railway Co Chicago, Burlington & Quincy R. R Illinois Central R. R Manufacturers Junct on Ry	Crawford Ill			
	Chicago Junction Ry Chicago River & Indiana R. R Illinois Northern Ry	Western Ave Ill			

85 Cancels 85 of Tariff	Terminal Allowance	Coke Company, terminal switching as performed by Chicago By-Products Coke Company for account of Chicago & Illinois Western Railroad. Chicago By-Products Coke Company will be allowed for such service out of current rate to or from their plant, actual cost of service performed, as specified in monthly bills submitted to this railroad, on all cars handled between points of interchange with this railroad and first point at which cars are loaded or unloaded, subject to a maximum allowance of $1.85 per car. The above allowance includes handling of empty cars in reverse direction or empty cars handled preparatory to loading. (b) ♦Cancel. Allowance to Commonwealth Edison Company (Crawford Avenue Plant) discontinued. Published in compliance with order of Interstate Commerce Commission in Ex Parte 104, 49th Supplemental Report, of April 1, 1936.
90 Cancels 90 of Tariff	Distance Rates	^Cancel. Tariff, as amended, does not contain distance rates. (XX-658-GFD-520.)

SECTION 2

When rates are published in this Section on the commodity transported from point of origin to destination, rates named in this section will apply regardless of rates between the same points published in other sections.

[2]Item No. 205-A cancels 205.

PROPORTIONAL RATES

BETWEEN	AND Connection with connecting lines shown below direct	Junction Points	Commodities	Rates in Cents per 100 Pounds (Except as Noted) A	B
Chicago Ill. Crawford - Hodgkins - McCook - Western Ave -	Alton R. R. Atchison, Topeka & Santa Fe Ry Baltimore & Ohio Chicago Term. R. R Indiana Harbor Belt R. R	McCook Ill.	Coal, per ton of 2,000 pounds	38	19
			Crushed Stone Sand and Gravel	2½	2½
			Ice, per ton of 2,000 pounds	25	19
			Railway Equipment on own wheels, viz.:		
			Empty Freight Cars, each	$2 70	$1 80
			Baggage Cars Ballast Spreaders Caboose Cars Dining Cars Express Cars Mail Cars Passenger Coaches Sleeping Cars Steam Shovels Steam Derricks Snow Plows	Each $9 50	$7 65
	Belt Railway Co Chicago, Burlington & Quincy R R Illinois Central R. R Manufacturers Junction Ry	Crawford Ill.			
	Chicago Junction Ry Chicago River & Indiana R. R Illinois Northern Ry Pennsylvania Railroad Company	Western Ave Ill.			
	All railroads via Chicago, Ill., when delivery is made direct to that road.		Locomotives Locomotive Tenders Locomotives and Tenders combined (dead or under steam).	50% of actual weight minimum weight 60,000 pounds	(3)2 (3)1½
			All other Freight	2	1½

^Change in wording which results in neither increases nor reductions in charges. ♦Increase.
A—When point of origin and destination are within ①Chicago Switching District.
B—When point of origin or destination is outside of ①Chicago Switching District.
①Chicago Switching District, definition of, see page 3 of tariff.
(2)When pilot is necessary an additional charge of $5.00 will be made to cover service of pilot.
(3)Name of industry changed. New name included in list.
[2]Reissued from Supplement No. 2, effective August 12, 1935

JOINT PROPORTIONAL RATES

[3]Item No. 210-A cancels 210.

Between (except as noted)

Chicago.....Ill. McCook.....Ill.
Crawford.....Ill. Western Ave.....Ill.
Hodgkins (formerly Gary)..Ill.

AND

Junction of Intermediate Carriers named in Column Two below with Railroad named in Column One below, such junctions being within Chicago Switching District:

Column One	Column Two	Rates
(7)Alton R. R		
(7)Atchison, Topeka & Santa Fe Ry		
Baltimore & Ohio R. R	B. Ry. of C.; B. & O. C. T. R. R.	
(7)Baltimore & Ohio Chicago Terminal R. R		
(7)Belt Ry. of Chicago		
Chesapeake and Ohio Ry. of Indiana	B. Ry. of C; B. & O. C. T. R. R	
Chicago & Calumet River R. R	B. & O. C. T. R. R	
Chicago & Eastern Illinois R. R	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago & Erie R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago & North Western Ry	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry	
Chicago & Western Indiana R. R	B. Ry. of C	
Chicago, Aurora & Elgin R. R	B. & O. C. T. R. R.	
(7)Chicago, Burlington & Quincy R. R	B. Ry. of C.; B. & O. C. T. R. R.	(2)All Freight, when point of origin and destination are within (1)Chicago Switching District, 2 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago Great Western R. R	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago, Indianapolis & Louisville Ry	B. Ry. of C.	
Chicago, Indiana Southern R. R		
(7)Chicago Junction Ry	B. Ry. of C.; I. N. Ry.	
Chicago, Milwaukee, St. Paul & Pacific R. R.	B. & O. C. T. R. R	
C. M. St. P. & P. R. R. (Terre Haute Division)		
(7)Chicago River & Indiana R. R		
Chicago, Rock Island & Pacific Ry	B. Ry. of C.; B. & O. C. T. R. R	(2)All Freight, when point of origin or destination is outside (1)Chicago Switching District, 2 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago Short Line Ry	B. Ry of C.; B. & O. C. T. R. R	
Chicago, South Shore & South Bend R. R	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago, West Pullman & Southern Ry.	B. Ry. of C	
Cleveland, Cincinnati, Chicago & St. Louis Ry	B. Ry of C.; I. N. Ry	
Elgin, Joliet & Eastern Ry. (see Note 2 below)	B. Ry. of C.; B. & O. C. T. R. R.	
Erie R. R	B. Ry. of C.; B. & O. C. T. R. R	
Grand Trunk Ry	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry	
(7)Illinois Central R. R		
(7)Illinois Northern Ry		
(7)Indiana Harbor Belt R. R		
(7)Manufacturers Junction Ry		
Michigan Central R. R	B. Ry. of C	
Minneapolis, St. Paul & Sault Ste. Marie Ry	B Ry. of C.; B. & O. C. T. R. R.; I. N. Ry	
New York Central R. R	B. Ry. of C.; B. & O. C. T. R. R	
New York, Chicago & St. Louis R. R	B. Ry. of C.; B. & O. C. T. R. R.	
(7)Pennsylvania R. R	B. Ry. of C.; B. & O. C. T. R. R	
Pere Marquette R. R	B. Ry. of C	
Pullman R. R	B. Ry. of C.; B. & O. C. T. R. R	
Wabash Ry		

⑦Alton R. R		
⑦Atchison, Topeka & Santa Fe Ry		
Baltimore & Ohio R. R	B. Ry. of C.; B. & O. C. T. R. R.	
⑦Baltimore & Ohio Chicago Terminal R. R		
⑦Belt Ry. of Chicago		
Chesapeake and Ohio Ry. of Indiana	B. Ry. of C; B. & O. C. T. R. R.	
Chicago & Calumet River R. R	B. & O. C. T. R. R	
Chicago & Eastern Illinois R. R	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago & Erie R. R	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago & North Western Ry	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry	
Chicago & Western Indiana R. R	B. Ry. of C	
Chicago, Aurora & Elgin R. R	B. & O. C. T. R. R.	
⑦Chicago, Burlington & Quincy R. R		
Chicago Great Western R. R	B. Ry. of C.; B. & O. C. T. R. R.	③All Freight, when point of origin and destination are within ①Chicago Switching District, ②2 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago, Indianapolis & Louisville Ry	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago, Indiana Southern R. R	B. Ry. of C	
⑦Chicago Junction Ry		
Chicago, Milwaukee, St. Paul & Pacific R. R	B. Ry. of C.; I. N. Ry	
C. M. St. P. & P. R. R. (Terre Haute Division)	B. & O. C. T. R. R	
⑦Chicago River & Indiana R. R		
Chicago, Rock Island & Pacific Ry	B. Ry. of C.; B. & O. C. T. R. R	③All Freight, when point of origin or destination is outside ①Chicago Switching District, 2 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago Short Line Ry	B. Ry. of C.; B. & O. C. T. R. R	
Chicago, South Shore & South Bend R. R	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago, West Pullman & Southern Ry	B. Ry. of C	
Cleveland, Cincinnati, Chicago & St. Louis Ry	B. Ry. of C.; I. N. Ry	
Elgin, Joliet & Eastern Ry. (see Note 2 below)	B. Ry. of C.; B. & O. C. T. R. R.	
Erie R. R	B. Ry. of C.; B. & O. C. T. R. R	
Grand Trunk Ry	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry	
⑦Illinois Central R. R		
⑦Illinois Northern Ry		
⑦Indiana Harbor Belt R. R		
⑦Manufacturers Junction Ry		
Michigan Central R. R	B. Ry. of C	
Minneapolis, St. Paul & Sault Ste. Marie Ry	B Ry. of C.; B. & O. C. T. R. R.; I. N. Ry	
New York Central R. R	B. Ry. of C.; B. & O. C. T. R. R	
New York, Chicago & St. Louis R. R	B. Ry. of C.; B. & O. C. T. R. R.	
⑦Pennsylvania R. R		
Pere Marquette R. R	B. Ry. of C.; B. & O. C. T. R. R	
Pullman R. R	B. Ry. of C	
Wabash Ry	B. Ry. of C.; B. & O. C. T. R. R	

①Chicago Switching District, definition of, see page 3 of tariff.

②Exceptions.

Railway Equipment on own wheels, viz.:

Baggage Cars.
Dining Cars.
Express or Mail Cars.
Freight Cars.
Locomotives or Tenders.
Passenger Coaches.
Sleeping Cars.
Tank Cars.

For rates on these commodities, see tariffs of Individual Carriers lawfully on file with Interstate Commerce Commission (on Interstate traffic) and with various State Commissions (on Intrastate traffic).

④Issued in compliance with order of Interstate Commerce Commission in Docket No. 19610, of July 3, 1933.

⑦Cancel account direct connection with C. & I. W. R. R. For rates to apply, see Item 205-A.

Note 2.—Rates in connection with Elgin, Joliet & Eastern Ry. apply to but not from points on that line.

⑫Reissued from Supplement No. 2, effective August 12, 1935.

SECTION 2

MISCELLANEOUS COMMODITY RATES

In Cents per 100 Pounds Unless Otherwise Specified

Item No.	APPLYING ON	BETWEEN (Except as noted)	AND (Except as noted)	RATES
[3] 280-A Cancels 280	**Crushed Stone**, carloads, minimum weight 110,000 pounds. **Rates in cents per ton of 2,000 pounds. Expires with December 31, 1937.**	**FROM** Quarries of the Consumers Co., Dolese & Shepard, and Riverside Lime and Cement Co., located at or near McCook, Ill.	**TO** Sewage treatment plant of the Sanitary District of Chicago at 39th Street and 52nd Ave., within the switching district of Chicago, Ill.	①②30

Amends page 8 of tariff.

[3]SECTION 3

Where rates are published in Section 2 the rates named in this Section on the same commodity from and to the same points via the same route will not apply.

COMMODITY RATES

Between Stations on Chicago & Illinois Western R. R.

DISTANCES IN MILES / ITEM No.[3]	IN CENTS PER 100 POUNDS		
	300	305	310
	Bran, shipstuff and shorts, in sacks, in lots of 2,000 pounds or over.	Feed, chopped or ground, in sacks, in lots of 2,000 pounds or over.	Flour, in barrels or sacks, in lots of 2,000 pounds or over.
Cancel, account no movement.			

①Published to meet motor truck competition. Not subject to Agent R. A. Sperry's Tariff of Emergency Charges No. 67-A, I. C. C. No. 311, Ill. C. C. No. 148, supplements thereto or successive issues thereof.

②Issued in compliance with order of the Interstate Commerce Commission in Docket 19610, third supplemental report, of June 25, 1935.

[3] **Reissued** from Supplement No. 3, effective April 29, 1936.

159

Supplement No. 5 to
Ill. C. C. No. 21-A
Cancels Supplement No. 4.
Supplements Nos. 01 and 5 contain all changes from original tariff effective on date hereof.

Supplement No. 5 to
I. C. C. No. 125-A
Cancels Supplement No. 4.
Supplements Nos. 01 and 5 contain all changes from original tariff effective on date hereof.

CHICAGO & ILLINOIS WESTERN RAILROAD

IN CONNECTION WITH

PARTICIPATING CARRIERS AS SHOWN IN TARIFF

SUPPLEMENT No. 5 TO G. F. D. 520-E

Cancels Supplement No. 4.

Supplements Nos. 01 and 5 contain all changes from original tariff effective on date hereof.

SUPPLEMENT TO

FREIGHT TARIFF

— OF —

Stamp here date received

Local, Joint and Proportional Rates

APPLYING ON

COMMODITIES

Between Stations in State of Illinois

— ALSO —

RULES GOVERNING HANDLING OF

CARLOAD FREIGHT

— AT AND BETWEEN —

Stations on the Chicago & Illinois Western R. R.

— ALSO BETWEEN —

Stations Named Herein

— AND —

Junctions and Connecting Lines, and Between Connections

Governed (except as otherwise provided herein) by Illinois Freight Classification No. 18, R. A. Sperry's I. C. C. No. 317, Ill. C. C. No. 149, supplements thereto or successive issues thereof.

Except as otherwise provided, charges resulting from the rates in this supplement are subject to the [illegible]

SUPPLEMENT No. 5 TO G. F. D. 520-E

Cancels Supplement No. 4.

Supplements Nos. 1 1 and 5 contain all changes from original tariff effective on date hereof.

SUPPLEMENT TO

FREIGHT TARIFF

— OF —

Local, Joint and Proportional Rates

APPLYING ON

COMMODITIES

Between Stations in State of Illinois

— ALSO —

RULES GOVERNING HANDLING OF

CARLOAD FREIGHT

— AT AND BETWEEN —

Stations on the Chicago & Illinois Western R. R.

— ALSO BETWEEN —

Stations Named Herein

— AND —

Junctions and Connecting Lines, and Between Connections

Stamp here date received

Governed (except as otherwise provided herein) by Illinois Freight Classification No. 18, R. A. Sperry's I. C. C. No. 317, Ill. C. C. No. 149, supplements thereto or successive issues thereof.

Except as otherwise provided, charges resulting from the rates in this supplement are subject to the provisions of Agent R. A. Sperry's Tariff of Emergency Charges No. 67-A, I. C. C. No. 311, Ill. C. C. No. 148, supplements thereto or successive issues thereof.

ISSUED JUNE 15, 1936.

EFFECTIVE JULY 17, 1936.
(Except as otherwise provided herein.)

(Special Supplement of Emergency Charges. (Ex Parte 115).

Issued by
W. F. EBERHARDT
Traffic Manager
135 East Eleventh Place,
CHICAGO, ILL.

[2] Amends page 2 of tariff.

LIST OF INDUSTRIES LOCATED ON CHICAGO & ILLINOIS WESTERN R. R.

NAME	LOCATION	NAME	LOCATION
CANCEL:		ADD:	
(a) American Tar Products Co	Crawford, Ill.	Consolidated Co	McCook, Ill.
		Herlihy Mid-Continent Construction Co	Crawford, Ill.
		Koppers Products Co	Crawford, Ill.

RULES AND REGULATIONS

Rule No.	SUBJECT	RULES
85 Cancels 85 of Supplement No. 4	Terminal Allowance	(a) ♦Cancel. Allowance to Chicago By-Products Coke Company discontinued. Published in compliance with order of the Interstate Commerce Commission in Ex Parte 104, Fifty-Sixth Supplemental Report of May 28, 1936. (Ex Parte 104) (b) ♦Cancel. Allowance to Commonwealth Edison Company (Crawford Avenue Plant) discontinued. Published in compliance with order of Interstate Commerce Commission in Ex Parte 104, 49th Supplemental Report, of April 1, 1936.
♦90 Cancels 90 of Tariff	Distance Rates	Cancel. Tariff, as amended, does not contain distance rates. (XX-658-GFD-520.)

SECTION 2

When rates are published in this Section on the commodity transported from point of origin to destination, rates named in this section will apply regardless of rates between the same points published in other sections.

♦ Item No. 205-A cancels 205.

PROPORTIONAL RATES

BETWEEN	AND Connection with connecting lines shown below direct	Junction Points	Commodities	Rates in Cents per 100 Pounds (Except as Noted) A	B
Chicago Ill. Crawford " Hodgkins " McCook " Western Ave "	Alton R. R. Atchison, Topeka & Santa Fe Ry Baltimore & Ohio Chicago Term. R. R Indiana Harbor Belt R. R	McCook Ill.	Coal, per ton of 2,000 pounds	38	19
			Crushed Stone Sand and Gravel	2½	2½
			Ice, per ton of 2,000 pounds	25	19
			Railway Equipment on own wheels, viz.:		
			Empty Freight Cars, each	$2 70	$1 80
			Baggage Cars Ballast Spreaders Caboose Cars Dining Cars Express Cars		
	Belt Railway Co Chicago, Burlington & Quincy R. R Illinois Central R. R Manufacturers Junction Ry	Crawford Ill.	Mail Cars, Each	$9 50	$7 65
			Passenger Coaches Sleeping Cars Steam Shovels		
	Chicago Junction Ry				

Rule No.	SUBJECT	RULES
85 Cancels 85 of Supplement No. 4	Terminal Allowance	(a) ♦**Cancel.** Allowance to Chicago By-Products Coke Company discontinued. Published in compliance with order of the Interstate Commerce Commission in Ex Parte 104, Fifty-Sixth Supplemental Report of May 28, 1936. (Ex Parte 104) (b) ‡**Cancel.** Allowance to Commonwealth Edison Company (Crawford Avenue Plant) discontinued. Published in compliance with order of Interstate Commerce Commission in Ex Parte 104, 49th Supplemental Report, of April 1, 1936.
‡90 Cancels 90 of Tariff	Distance Rates	**Cancel.** Tariff, as amended, does not contain distance rates. (XX-658-GFD-520.)

SECTION 2

When rates are published in this Section on the commodity transported from point of origin to destination, rates named in this section will apply regardless of rates between the same points published in other sections.

‡ Item No. 205-A cancels 205.

PROPORTIONAL RATES

BETWEEN	AND Connection with connecting lines shown below direct	Junction Points	Commodities	Rates in Cents per 100 Pounds (Except as Noted) A	B
Chicago, Ill. Crawford " Hodgkins " McCook " Western Ave "	Alton R. R. Atchison, Topeka & Santa Fe Ry Baltimore & Ohio Chicago Term. R. R Indiana Harbor Belt R. R	McCook Ill.	Coal, per ton of 2,000 pounds	38	19
			Crushed Stone Sand and Gravel	2½	2½
			Ice, per ton of 2,000 pounds	25	19
			Railway Equipment on own wheels, viz.:		
			Empty Freight Cars, each	$2 70	$1 80
			Baggage Cars Ballast Spreaders Caboose Cars Dining Cars Express Cars Mail Cars Passenger Coaches Sleeping Cars Steam Shovels Steam Derricks Snow Plows	Each $9 50	$7 65
	Belt Railway Co Chicago, Burlington & Quincy R. R Illinois Central R. R Manufacturers Junction Ry	Crawford Ill.			
	Chicago Junction Ry Chicago River & Indiana R. R Illinois Northern Ry Pennsylvania Railroad Company	Western Ave Ill.			
	All railroads via Chicago, Ill., when delivery is made direct to that road.		Locomotives Locomotive Tenders	50% of actual weight	
			Locomotives and Tenders combined (dead or under steam).	minimum weight 60,000 pounds ‡2	(x)1½
			All other Freight	2	1½

A When point of origin and destination are within ‡ Chicago Switching District ♦Increase.
B When point of origin or destination is outside of ‡ Chicago Switching District.
‡ Chicago Switching District, definition of, see page 3 of tariff.
‡ When pilot is necessary an additional charge of $5.00 will be made to cover service of pilot
‡ Name of industry changed. New name included in list.
‡ **Reissued** from Supplement No. 2, effective August 12, 1935
‡ **Reissued** from Supplement No. 4, effective May 18, 1936

JOINT PROPORTIONAL RATES

2/Item No. 210-A cancels 210.

Between (except as noted)

Chicago	Ill.	McCook	Ill.
Crawford	Ill.	Western Ave	Ill.
Hodgkins (formerly Gary)	Ill.		

AND

Junction of Intermediate Carriers named in Column Two below with Railroad named in Column One below, such junctions being within Chicago Switching District:

Column One	Column Two	Rates
1/ Alton R. R		
1/ Atchison, Topeka & Santa Fe Ry		
Baltimore & Ohio R. R	B. Ry. of C.; B. & O. C. T. R. R.	
1/ Baltimore & Ohio Chicago Terminal R. R		
1/ Belt Ry. of Chicago		
Chesapeake and Ohio Ry. of Indiana	B. Ry. of C; B. & O. C. T. R. R.	
Chicago & Calumet River R. R	B. & O. C. T. R. R	
Chicago & Eastern Illinois R. R	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago & Erie R. R	B. Ry. of C.; B. & O. C. T. R. R	
Chicago & North Western Ry	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry	
Chicago & Western Indiana R. R	B. Ry. of C	
Chicago, Aurora & Elgin R. R	B. & O. C. T. R. R	
1/ Chicago, Burlington & Quincy R. R		
Chicago Great Western R. R	B. Ry. of C.; B. & O. C. T. R. R.	3/All Freight, when point of origin and destination are within (1)Chicago Switching District, 2 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago, Indianapolis & Louisville Ry	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago, Indiana Southern R. R	B. Ry. of C	
1/ Chicago Junction Ry		
Chicago, Milwaukee, St. Paul & Pacific R. R.	B. Ry. of C.; I. N. Ry	
C. M. St. P. & P. R. R. (Terre Haute Division)	B. & O. C. T. R. R	
1/ Chicago River & Indiana R. R		
Chicago, Rock Island & Pacific Ry	B. Ry. of C.; B. & O. C. T. R. R	3/All Freight, when point of origin or destination is outside (1)Chicago Switching District, 2 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago Short Line Ry	B. Ry. of C.; B. & O. C. T. R. R	
Chicago, South Shore & South Bend R. R	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago, West Pullman & Southern Ry	B. Ry. of C	
Cleveland, Cincinnati, Chicago & St. Louis Ry	B. Ry. of C.; I. N. Ry	
Elgin, Joliet & Eastern Ry. (see Note 2 below)	B. Ry. of C.; B. & O. C. T. R. R.	
Erie R. R	B. Ry. of C.; B. & O. C. T. R. R	
Grand Trunk Ry	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry	
1/ Illinois Central R. R		
1/ Illinois Northern Ry		
1/ Indiana Harbor Belt R. R		
1/ Manufacturers Junction Ry		
Michigan Central R. R	B. Ry. of C	
Minneapolis, St. Paul & Sault Ste. Marie Ry	B Ry. of C.; B. & O. C. T. R. R.; I. N. Ry	
New York Central R. R	B. Ry. of C.; B. & O. C. T. R. R	
New York, Chicago & St. Louis R. R	B. Ry. of C.; B. & O. C. T. R. R.	
1/ Pennsylvania R. R		
Pere Marquette R. R	B. Ry. of C.; B. & O. C. T. R. R	
Pullman R. R	B. Ry. of C	
Wabash Ry	B. Ry. of C.; B. & O. C. T. R. R	

1/ Chicago Switching District, definition of, see page 3 of tariff.
3/ Exceptions... Railway Equipment on own wheels, viz.:

² Alton R. R.		
² Atchison, Topeka & Santa Fe Ry		
Baltimore & Ohio R. R	B. Ry. of C.; B. & O. C. T. R. R.	
² Baltimore & Ohio Chicago Terminal R. R		
²Belt Ry. of Chicago		
Chesapeake and Ohio Ry. of Indiana	B. Ry. of C; B. & O. C. T. R. R	
Chicago & Calumet River R. R	B. & O. C. T. R. R	
Chicago & Eastern Illinois R. R	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago & Erie R. R	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago & North Western Ry	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry	
Chicago & Western Indiana R. R	B. Ry. of C	
Chicago, Aurora & Elgin R. R	B. & O. C. T. R. R	
² Chicago, Burlington & Quincy R. R		
Chicago Great Western R. R	B. Ry. of C.; B. & O. C. T. R. R.	a)All Freight, when point of origin and destination are within (1)Chicago Switching District, 2 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago, Indianapolis & Louisville Ry	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago, Indiana Southern R. R	B. Ry. of C	
² Chicago Junction Ry		
Chicago, Milwaukee, St. Paul & Pacific R. R	B. Ry. of C.; I. N. Ry	
C. M. St. P. & P. R. R. (Terre Haute Division)	B. & O. C. T. R. R	
² Chicago River & Indiana R. R		
Chicago, Rock Island & Pacific Ry	B. Ry. of C.; B. & O. C. T. R. R	a)All Freight, when point of origin or destination is outside (1)Chicago Switching District, 2 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago Short Line Ry	B. Ry. of C.; B. & O. C. T. R. R	
Chicago, South Shore & South Bend R. R	B. Ry. of C.; B. & O. C. T. R. R	
Chicago, West Pullman & Southern Ry	B. Ry. of C	
Cleveland, Cincinnati, Chicago & St. Louis Ry	B. Ry. of C.; I. N. Ry	
Elgin, Joliet & Eastern Ry. (see Note 2 below)	B. Ry. of C.; B. & O. C. T. R. R.	
Erie R. R	B. Ry. of C.; B. & O. C. T. R. R	
Grand Trunk Ry	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry	
² Illinois Central R. R		
² Illinois Northern Ry		
² Indiana Harbor Belt R. R		
² Manufacturers Junction Ry		
Michigan Central R. R	B. Ry. of C	
Minneapolis, St. Paul & Sault Ste. Marie Ry	B Ry. of C.; B. & O. C. T. R. R.; I. N. Ry	
New York Central R. R	B. Ry. of C.; B. & O. C. T. R. R	
New York, Chicago & St. Louis R. R	B. Ry. of C.; B. & O. C. T. R. R.	
² Pennsylvania R. R		
Pere Marquette R. R	B. Ry. of C.; B. & O. C. T. R. R	
Pullman R. R	B. Ry. of C	
Wabash Ry	B. Ry. of C.; B. & O. C. T. R. R	

¹ Chicago Switching District, definition of, see page 3 of tariff.

³ Exceptions. Railway Equipment on own wheels, viz.:

Baggage Cars. Freight Cars. Sleeping Cars.

Dining Cars. Locomotives or Tenders. Tank Cars.

Express or Mail Cars. Passenger Coaches.

For rates on these commodities, see tariffs of Individual Carriers lawfully on file with Inter-state Commerce Commission (on Interstate traffic) and with various State Commissions (on Intrastate traffic).

⁵ Issued in compliance with order of Interstate Commerce Commission in Docket No. 19510, of July 3, 1933.

² Cancel account direct connection with C. & I. W. R. R. For rates to apply, see Item 2 5-V.

Note 2. Rates in connection with Elgin, Joliet & Eastern Ry. apply to but not from points on that line.

² Reissued from Supplement No. 2 effective August 12, 1935

SECTION 2

MISCELLANEOUS COMMODITY RATES

In Cents per 100 Pounds Unless Otherwise Specified

Item No.	APPLYING ON	BETWEEN (Except as noted)	AND (Except as noted)	RATES
[3] 280-A Cancels 280	Crushed Stone, carloads, minimum weight 110,000 pounds. Rates in cents per ton of 2,000 pounds. Expires with December 31, 1937.	FROM Quarries of the Consumers Co., Dolese & Shepard, and Riverside Lime and Cement Co., located at or near McCook, Ill.	TO Sewage treatment plant of the Sanitary District of Chicago at 39th Street and 52nd Ave., within the switching district of Chicago, Ill.	[1] [2] 30

Amends page 8 of tariff.

SECTION 3

Where rates are published in Section 2 the rates named in this Section on the same commodity from and to the same points via the same route will not apply.

COMMODITY RATES

Between Stations on Chicago & Illinois Western R. R.

DISTANCES IN MILES	ITEM No.	IN CENTS PER 100 POUNDS		
		300	305	310
		Bran, shipstuff and shorts, in sacks, in lots of 2,000 pounds or over.	Feed, chopped or ground, in sacks, in lots of 2,000 pounds or over.	Flour, in barrels or sacks, in lots of 2,000 pounds or over.
Cancel, account no movement.				

6 Published to meet motor truck competition. Not subject to Agent R. A. Sperry's Tariff of Emergency Charges No. 67-A, I. C. C. No. 311, Ill. C. C. No. 148, supplements thereto or successive issues thereof.

2 Issued in compliance with order of the Interstate Commerce Commission in Docket 19610, third supplemental report, of June 25, 1935.

3 Reissued from Supplement No. 3, effective April 29, 1936.

POSTPONEMENT SUPPLEMENT

Supplement No. 6 to
Ill. C. C. No. 21-A
Supplements Nos. @1, @5 and @6 contain all changes from original tariff effective on date hereof.

Supplement No. 6 to
I. C. C. No. 125-A
Supplements Nos. @1, @5 and @6 contain all changes from original tariff effective on date hereof.

CHICAGO & ILLINOIS WESTERN RAILROAD

IN CONNECTION WITH

PARTICIPATING CARRIERS AS SHOWN IN TARIFF

SUPPLEMENT No. 6 TO G. F. D. 520-E

Supplements Nos. @1, @5 and @6 contain all changes from original tariff effective on date hereof

SUPPLEMENT TO

FREIGHT TARIFF

— OF —

Stamp here date received

2

Local, Joint and Proportional Rates

APPLYING ON

COMMODITIES

Between Stations in State of Illinois

— ALSO —

RULES GOVERNING HANDLING OF

CARLOAD FREIGHT

— AT AND BETWEEN —

Stations on the Chicago & Illinois Western R. R.

— ALSO BETWEEN —

Stations Named Herein

— AND —

Junctions and Connecting Lines, and Between Connections

POSTPONEMENT NOTICE.

SUPPLEMENT No. 6 TO G. F. D. 520-E

Supplements Nos. ①1, ②5 and ③6 contain all changes from original tariff effective on date hereof

SUPPLEMENT TO

FREIGHT TARIFF

— OF —

Stamp here date received

2

Local, Joint and Proportional Rates

APPLYING ON

COMMODITIES

Between Stations in State of Illinois

—ALSO—

RULES GOVERNING HANDLING OF

CARLOAD FREIGHT

—AT AND BETWEEN—

Stations on the Chicago & Illinois Western R. R.

—ALSO BETWEEN—

Stations Named Herein

—AND—

Junctions and Connecting Lines, and Between Connections

POSTPONEMENT NOTICE.

The effective date of Paragraph (a) of Rule No. 85 of Supplement No. 5 to I. C. C. No. 125-A, Ill. C. C. No. 21-A, C. & I. W. R. R. Tariff G. F. D. 520-E is hereby postponed until October 15, 1936.

Pending restoration, reissue or cancellation of matter under postponement, provisions of I. C. C. No. 125-A, Ill. C. C. No. 21-A, C. & I. W. R. R. Tariff G. F. D. 520-E and effective supplements thereto, apply.

ISSUED JULY 8, 1936.

EFFECTIVE JULY 17, 1936

Issued on one (1) day's notice under Special Permission of the Interstate Commerce Commission No. 154345 of July 3, 1936, and on one (1) day's notice under Special Permission of the Illinois Commerce Commission No. R-9091 of July 7, 1936.

①Special Supplement of Emergency Charges. (Ex Parte 115).
②Partly under postponement.
③Postponement Supplement.

Issued by
W. F. EBERHARDT
Traffic Manager
135 East Eleventh Place
CHICAGO, ILL.

POSTPONEMENT SUPPLEMENT

Supplement No. 7 to
Ill C. C. No. 21-A
Cancels Supplement No. 6.
Supplements Nos. ①1, ②5 and ③7 contain all changes from original tariff effective on date hereof.

Supplement No. 7 to
I. C. C. No. 125-A
Cancels Supplement No. 6.
Supplements Nos. ①1, ②5 and ③7 contain all changes from original tariff effective on date hereof.

CHICAGO & ILLINOIS WESTERN RAILROAD

IN CONNECTION WITH

PARTICIPATING CARRIERS AS SHOWN IN TARIFF

SUPPLEMENT No. 7 TO G. F. D. 520-E
Cancels Supplement No. 6.
Supplements Nos. ①1, ②5 and ③7 contain all changes from original tariff effective on date hereof.

SUPPLEMENT TO

FREIGHT TARIFF

—OF—

Stamp here date received

Local, Joint and Proportional Rates

APPLYING ON

COMMODITIES

Between Stations in State of Illinois

—ALSO—

RULES GOVERNING HANDLING OF

CARLOAD FREIGHT

—AT AND BETWEEN—

Stations on the Chicago & Illinois Western R. R.

—ALSO BETWEEN—

Stations Named Herein

—AND—

Junctions and Connecting Lines, and Between Connections

POSTPONEMENT NOTICE

PARTICIPATING CARRIERS AS SHOWN IN TARIFF

SUPPLEMENT No. 7 TO G. F. D. 520-E
Cancels Supplement No. 6.
Supplements Nos. ①1, ②5 and ③7 contain all changes from original tariff effective on date hereof.

SUPPLEMENT TO

Stamp here date received

FREIGHT TARIFF

—OF—

Local, Joint and Proportional Rates

APPLYING ON

COMMODITIES

Between Stations in State of Illinois

—ALSO—

RULES GOVERNING HANDLING OF

CARLOAD FREIGHT

—AT AND BETWEEN—

Stations on the Chicago & Illinois Western R. R.

—ALSO BETWEEN—

Stations Named Herein

—AND—

Junctions and Connecting Lines, and Between Connections

POSTPONEMENT NOTICE.

The effective date of Paragraph (n) of Rule No. 85 of Supplement No. 5 to I. C. C. No. 125-A, Ill. C. C. No. 21-A, C. & I. W. R. R. Tariff G. F. D. 520-E is hereby postponed until December 15, 1936.

Pending restoration, reissue or cancellation of matter under postponement, provisions of I. C. C. No. 125-A, Ill. C. C. No. 21-A, C. & I. W. R. R. Tariff G. F. D. 520-E and effective supplements thereto, apply.

ISSUED SEPTEMBER 12, 1936. **EFFECTIVE OCTOBER 15, 1936.**

Issued on compliance with order of the Interstate Commerce Commission in Ex Parte No. 104, Fifty-Sixth Supplemental Report of May 28, 1936, as amended.

①Special Supplement of Emergency Charges. (Ex Parte 115).
②Partly under postponement.
③Postponement Supplement.

Issued by
W. F. EBERHARDT
Traffic Manager
135 East Eleventh Place,
CHICAGO, ILL.

CHICAGO BY-PRODUCT COKE CO.
3500 S. CRAWFORD AVE.
CHICAGO, ILL.

CANCELLATION SUPPLEMENT

Supplement No. 8 to
Ill. C. C. No. 21-A
Cancels Supplement No. 7.
Supplements Nos. ①1, 5 and ②8 contain all changes from original tariff effective on date hereof.

Supplement No. 8 to
I. C. C. No. 125-A
Cancels Supplement No. 7.
Supplements Nos. ①1, 5 and ②8 contain all changes from original tariff effective on date hereof.

CHICAGO & ILLINOIS WESTERN RAILROAD

IN CONNECTION WITH

PARTICIPATING CARRIERS AS SHOWN IN TARIFF

SUPPLEMENT No. 8 TO G. F. D. 520-E
Cancels Supplement No. 7.
Supplements Nos. ①1, 5 and ②8 contain all changes from original tariff effective on date hereof.

SUPPLEMENT TO

FREIGHT TARIFF

—OF—

Local, Joint and Proportional Rates

APPLYING ON

COMMODITIES

Between Stations in State of Illinois

—ALSO—

RULES GOVERNING HANDLING OF

CARLOAD FREIGHT

—AT AND BETWEEN—

Stations on the Chicago & Illinois Western R. R.

—ALSO BETWEEN—

Stations Named Herein

—AND—

Junctions and Connecting Lines, and Between Connections

Stamp here date received

3

CANCELLATION NOTICE

PARTICIPATING CARRIERS AS SHOWN IN TARIFF

SUPPLEMENT No. 8 TO G. F. D. 520-E
Cancels Supplement No. 7.
Supplements Nos. ①1, 5 and ②8 contain all changes from original tariff effective on date hereof.

SUPPLEMENT TO

Stamp here date received

3

FREIGHT TARIFF

—OF—

Local, Joint and Proportional Rates

APPLYING ON

COMMODITIES

Between Stations in State of Illinois

—ALSO—

RULES GOVERNING HANDLING OF

CARLOAD FREIGHT

—AT AND BETWEEN—

Stations on the Chicago & Illinois Western R. R.

—ALSO BETWEEN—

Stations Named Herein

—AND—

Junctions and Connecting Lines, and Between Connections

CANCELLATION NOTICE

The cancellation of Terminal Allowance to Chicago By-Products Coke Company as provided in paragraph (a), Item 85, page 2 of Supplement 5 to I. C. C. No. 125-A, Ill. C. C. No. 21-A, C. & I. W. R. R., G. F. D. 520-E, is hereby canceled and withdrawn in compliance with order of the United States District Court, Northern District of Illinois, Eastern Division, at Chicago, Illinois, in Equity No. 15335, dated December 2, 1936.

The provisions of paragraph (a), Item 85 of I. C. C. No. 125-A, Ill. C. C. No. 21-A, C. & I. W. R. R., G. F. D. 520-E continues in effect pending further amendment to this tariff.

ISSUED DECEMBER 12, 1936. **EFFECTIVE DECEMBER 15, 1936.**

①Special Supplement of Emergency Charges. (Ex Parte 115).
②Cancellation Supplement.

Issued by
W. F. EBERHARDT
Traffic Manager
135 East Eleventh Place,
CHICAGO, ILL.

Supplement No. 9 to
Ill. C. C. No. 21-A
Cancels Supplements Nos. ①1 and 5.
Supplements Nos. ②8 and 9 contain all changes from original tariff effective on date hereof

Supplement No. 9 to
I. C. C. No. 125-A
Cancels Supplements Nos. ①1 and 5.
Supplements Nos. ②8 and 9 contain all changes from original tariff effective on date hereof.

CHICAGO & ILLINOIS WESTERN RAILROAD

IN CONNECTION WITH

PARTICIPATING CARRIERS AS SHOWN IN TARIFF

SUPPLEMENT No. 9 TO G. F. D. 520-E
Cancels Supplements Nos. ①1 and 5.
Supplements Nos. ②8 and 9 contain all changes from original tariff effective on date hereof.

SUPPLEMENT TO

FREIGHT TARIFF

—OF—

Stamp here date received

4

Local, Joint and Proportional Rates

APPLYING ON

COMMODITIES

Between Stations in State of Illinois

—ALSO—

RULES GOVERNING HANDLING OF

CARLOAD FREIGHT

—AT AND BETWEEN—

Stations on the Chicago & Illinois Western R. R.

—ALSO BETWEEN—

Stations Named Herein

—AND—

Junctions and Connecting Lines, and Between Connections

Governed (except as otherwise provided herein) by Illinois Freight Classification No. 18, R. A. Sperry's I. C. C. No. 317, Ill. C. C. No. 149, supplements thereto or successive issues thereof.

PARTICIPATING CARRIERS AS SHOWN IN TARIFF

SUPPLEMENT No. 9 TO G. F. D. 520-E
Cancels Supplements Nos. ①1 and 5.
Supplements Nos. 2 8 and 9 contain all changes from original tariff effective on date hereof.

SUPPLEMENT TO

FREIGHT TARIFF

—OF—

Local, Joint and Proportional Rates

APPLYING ON

COMMODITIES

Between Stations in State of Illinois

—ALSO—

RULES GOVERNING HANDLING OF

CARLOAD FREIGHT

—AT AND BETWEEN—

Stations on the Chicago & Illinois Western R. R.

—ALSO BETWEEN—

Stations Named Herein

—AND—

Junctions and Connecting Lines, and Between Connections

Stamp here date received

4

Governed (except as otherwise provided herein) by Illinois Freight Classification No. 18, R. A. Sperry's I. C. C. No. 317, Ill. C. C. No. 149, supplements thereto or successive issues thereof.

ISSUED FEBRUARY 27, 1937.

EFFECTIVE APRIL 1, 1937.
(Except as otherwise provided herein)

① Special Supplement of Emergency Charges. (Ex Parte 115). Cancelled to clear records.
② Cancellation Supplement

Issued by
W. F. EBERHARDT
Traffic Manager
135 East Eleventh Place,
CHICAGO, ILL.

[1] Amends page 2 of tariff.

LIST OF INDUSTRIES LOCATED ON CHICAGO & ILLINOIS WESTERN R. R.

NAME	LOCATION	NAME	LOCATION
CANCEL:		ADD:	
[6] American Tar Products Co	Crawford, Ill.	Consolidated Co	McCook, Ill.
		Herlihy Mid-Continent Construction Co	Crawford, Ill.
		Koppers Products Co	Crawford, Ill.

RULES AND REGULATIONS

Rule No.	SUBJECT	RULES
85 Cancels 85 of Supplement No. 4 and 85 of Supplement No. 5	Terminal Allowance	(a) On all carload revenue shipments destined to or coming from plant of Chicago By-Products Coke Company, terminal switching is performed by Chicago By-Products Coke Company for account of Chicago & Illinois Western Railroad. Chicago By-Products Coke Company will be allowed for such service out of current rate to or from their plant, actual cost of service performed, as specified in monthly bills submitted to this railroad, on all cars handled between points of interchange with this railroad and first point at which cars are loaded or unloaded, subject to a maximum allowance of $1.85 per car. The above allowance includes handling of empty cars in reverse direction or empty cars handled preparatory to loading. (b) [4] Cancel. Allowances to Commonwealth Edison Company (Crawford Avenue Plant) discontinued. Published in compliance with order of Interstate Commerce Commission in Ex Parte 104, 49th Supplemental Report, of April 1, 1936.
[6] 90 Cancels 90 of Tariff	Distance Rates	Cancel. Tariff, as amended, does not contain distance rates. (XX-658-GFD-520.)

SECTION 2

When rates are published in this Section on the commodity transported from point of origin to destination, rates named in this section will apply regardless of rates between the same points published in other sections.

[1] Item No. 205-A cancels 205.

PROPORTIONAL RATES

BETWEEN	AND Connection with connecting lines shown below direct	Junction Points	Commodities	Rates in Cents per 100 Pounds (Except as Noted) A	B
	Alton R. R. Atchison, Topeka & Santa Fe Ry Baltimore & Ohio Chicago Term. R. R Indiana Harbor Belt R. R	McCook, Ill.	Coal, per ton of 2,000 pounds	38	19
			Crushed Stone Sand and Gravel	2½	2½
			Ice, per ton of 2,000 pounds	25	19
			Railway Equipment on own wheels, viz.:		
			Empty Freight Cars, each	$2 70	$1 80
	Belt Railway Co Chicago, Burlington & Quincy R. R Illinois Central R. R Manufacturers Junction Ry	Crawford, Ill.	Baggage Cars Ballast Spreaders Caboose Cars Dining Cars Express Cars Mail Cars Passenger Coaches Sleeping Cars	Each $9 50	$7 65
Chicago, Ill Crawford, " Hodgkins, " McCook, " Western Ave, "					

No.	SUBJECT	RULES
85 Cancels 85 of Supplement No. 4 and 85 of Supplement No. 5	Terminal Allowance	(a) On all carload revenue shipments destined to or coming from plant of Chicago By-Products Coke Company, terminal switching is performed by Chicago By-Products Coke Company for account of Chicago & Illinois Western Railroad. Chicago By-Products Coke Company will be allowed for such service out of current rate to or from their plant, actual cost of service performed, as specified in monthly bills submitted to this railroad, on all cars handled between points of interchange with this railroad and first point at which cars are loaded or unloaded, subject to a maximum allowance of $1.85 per car. The above allowance includes handling of empty cars in reverse direction or empty cars handled preparatory to loading. (b) [4]Cancel. Allowances to Commonwealth Edison Company (Crawford Avenue Plant) discontinued. Published in compliance with order of Interstate Commerce Commission in Ex Parte 104, 49th Supplemental Report, of April 1, 1936.
[6]90 Cancels 90 of Tariff	Distance Rates	Cancel. Tariff, as amended, does not contain distance rates. (XX-658-GFD-520.)

SECTION 2

When rates are published in this Section on the commodity transported from point of origin to destination, rates named in this section will apply regardless of rates between the same points published in other sections.

[5]Item No. 206-A cancels 206.

PROPORTIONAL RATES

BETWEEN	AND Connection with connecting lines shown below direct	Junction Points	Commodities	Rates in Cents per 100 Pounds (Except as Noted) A	Rates in Cents per 100 Pounds (Except as Noted) B
Chicago Ill Crawford - Hodgkins - McCook - Western Ave -	Alton R. R. Atchison, Topeka & Santa Fe Ry. Baltimore & Ohio Chicago Term. R. R. Indiana Harbor Belt R. R.	McCook Ill.	Coal, per ton of 2,000 pounds	38	19
			Crushed Stone Sand and Gravel	2½	2½
			Ice, per ton of 2,000 pounds	25	19
			Railway Equipment on own wheels, viz.:		
			Empty Freight Cars, each	$2 70	$1 80
			Baggage Cars Ballast Spreaders Caboose Cars Dining Cars Express Cars Mail Cars Passenger Coaches Sleeping Cars Steam Shovels Steam Derricks Snow Plows	Each $9 50	$7 65
	Belt Railway Co Chicago, Burlington & Quincy R. R. Illinois Central R. R. Manufacturers Junction Ry.	Crawford Ill.			
	Chicago Junction Ry. Chicago River & Indiana R. R. Illinois Northern Ry. Pennsylvania Railroad Company	Western Ave Ill.			
	All railroads via Chicago, Ill., when delivery is made direct to that road		Locomotives Locomotive Tenders Locomotives and Tenders combined (dead or under steam)	50% of actual weight, minimum weight 60,000 pounds	
				[3]2	[6]1½
			All other Freight	2	1½

A -When point of origin and destination are within Chicago Switching District.
B -When point of origin or destination is outside of Chicago Switching District.
[1]Chicago Switching District, definition of, see page 3 of tariff
[2]When pilot is necessary an additional charge of $5.00 will be made to cover service of pilot
[3]Name of industry changed. New name included in list
[4]Reissued from Supplement No. 2, effective August 12, 1935
[5]Reissued from Supplement No. 4, effective May 18, 1936

JOINT PROPORTIONAL RATES

(3) Item No. 210-A cancels 210.

Between (except as noted)

Chicago	Ill.	McCook	Ill.
Crawford	Ill.	Western Ave	Ill.
Hodgkins (formerly Gary)	Ill.		

AND

Junction of Intermediate Carriers named in Column Two below with Railroad named in Column One below, such junctions being within Chicago Switching District:

Column One	Column Two	Rates
(2) Alton R. R.		
(2) Atchison, Topeka & Santa Fe Ry	B. Ry. of C.; B. & O. C. T. R. R.	
Baltimore & Ohio R. R.		
(2) Baltimore & Ohio Chicago Terminal R. R.		
(2) Belt Ry. of Chicago		
Chesapeake and Ohio Ry. of Indiana	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago & Calumet River R. R.	B. & O. C. T. R. R.	
Chicago & Eastern Illinois R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago & Erie R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago & North Western Ry.	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry.	
Chicago & Western Indiana R. R.	B. Ry. of C.	
Chicago, Aurora & Elgin R. R.	B. & O. C. T. R. R.	
(2) Chicago, Burlington & Quincy R. R.	B. Ry. of C.; B. & O. C. T. R. R.	1) All Freight, when point of origin and destination are within (1) Chicago Switching District, 1½ cents per 100 pounds, minimum weight 60,000 pounds.
Chicago Great Western R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago, Indianapolis & Louisville Ry.		
Chicago, Indiana Southern R. R.	B. Ry. of C.	
(2) Chicago Junction Ry.		
Chicago, Milwaukee, St. Paul & Pacific R. R.	B. Ry. of C.; I. N. Ry.	
C. M. St. P. & P. R. R. (Terre Haute Division)	B. & O. C. T. R. R.	
(2) Chicago River & Indiana R. R.		
Chicago, Rock Island & Pacific Ry.	B. Ry. of C.; B. & O. C. T. R. R.	2) All Freight, when point of origin or destination is outside (1) Chicago Switching District, 2 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago Short Line Ry.	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago, South Shore & South Bend R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago, West Pullman & Southern Ry.	B. Ry. of C.	
Cleveland, Cincinnati, Chicago & St. Louis Ry.	B. Ry. of C.; I. N. Ry.	
Elgin, Joliet & Eastern Ry. (see Note 2 below)	B. Ry. of C.; B. & O. C. T. R. R.	
Erie R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
Grand Trunk Ry.	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry.	
(2) Illinois Central R. R.		
(2) Illinois Northern Ry.		
(2) Indiana Harbor Belt R. R.		
(2) Manufacturers Junction Ry.		
Michigan Central R. R.	B. Ry. of C.	
Minneapolis, St. Paul & Sault Ste. Marie Ry.	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry.	
New York Central R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
New York, Chicago & St. Louis R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
(2) Pennsylvania R. R.		
Pere Marquette R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
Pullman R. R.	B. Ry. of C.	
Wabash Ry.	B. Ry. of C.; B. & O. C. T. R. R.	

①Alton R. R.		
②Atchison, Topeka & Santa Fe Ry	B. Ry. of C.; B. & O. C. T. R. R.	
Baltimore & Ohio R. R.		
⑦Baltimore & Ohio Chicago Terminal R. R.		
⑦Belt Ry. of Chicago		
Chesapeake and Ohio Ry. of Indiana	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago & Calumet River R. R.	B. & O. C. T. R. R.	
Chicago & Eastern Illinois R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago & Erie R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago & North Western Ry.	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry.	
Chicago & Western Indiana R. R.	B. Ry. of C.	
Chicago, Aurora & Elgin R. R.	B. & O. C. T. R. R.	
⑦Chicago, Burlington & Quincy R. R.	B. Ry. of C.; B. & O. C. T. R. R.	⑤All Freight, when point of origin and destination are within ①Chicago Switching District, ⑥2 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago Great Western R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago, Indianapolis & Louisville Ry.	B. Ry. of C.	
Chicago, Indiana Southern R. R.	B. Ry. of C.; I. N. Ry.	
⑦Chicago Junction Ry.	B. & O. C. T. R. R.	
Chicago, Milwaukee, St. Paul & Pacific R. R.		
C. M. St. P. & P. R. R. (Terre Haute Division)		
⑦Chicago River & Indiana R. R.		
Chicago, Rock Island & Pacific Ry.	B. Ry. of C.; B. & O. C. T. R. R.	⑤All Freight, when point of origin or destination is outside ①Chicago Switching District, 3 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago Short Line Ry.	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago, South Shore & South Bend R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
Chicago, West Pullman & Southern Ry.	B. Ry. of C.	
Cleveland, Cincinnati, Chicago & St. Louis Ry.	B. Ry. of C.; I. N. Ry.	
Elgin, Joliet & Eastern Ry. (see Note 2 below)	B. Ry. of C.; B. & O. C. T. R. R.	
Erie R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
Grand Trunk Ry.	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry.	
⑦Illinois Central R. R.		
⑦Illinois Northern Ry.		
⑦Indiana Harbor Belt R. R.		
⑦Manufacturers Junction Ry.		
Michigan Central R. R.	B. Ry. of C.	
Minneapolis, St. Paul & Sault Ste. Marie Ry.	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry.	
New York Central R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
New York, Chicago & St. Louis R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
⑦Pennsylvania R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
Pere Marquette R. R.	B. Ry. of C.	
Pullman R. R.	B. Ry. of C.; B. & O. C. T. R. R.	
Wabash Ry.		

①Chicago Switching District, definition of, see page 3 of tariff.

②Exceptions. Railway Equipment on own wheels, viz:

Baggage Cars. Freight Cars. Sleeping Cars.
Dining Cars. Locomotives or Tenders. Tank Cars.
Express or Mail Cars. Passenger Coaches.

For rates on these commodities, see tariffs of Individual Carriers lawfully on file with Interstate Commerce Commission (on Interstate traffic) and with various State Commissions (on Intrastate traffic).

⑥Issued in compliance with order of Interstate Commerce Commission in Docket No. 19610, of July 3, 1933.

⑦Cancel account direct connection with C. & I. W. R. R. For rates to apply, see Item 205-A.

Note 2.—Rates in connection with Elgin, Joliet & Eastern Ry. apply to but not from points on that line.

[1] Reissued from Supplement No. 2, effective August 12, 1935.

SECTION 2

MISCELLANEOUS COMMODITY RATES
In Cents per 100 Pounds Unless Otherwise Specified

Item No.	APPLYING ON	BETWEEN (Except as noted)	AND (Except as noted)	RATES
265-A Cancels 265	Stone, Crushed, Rip Rap, Black Dirt and Cinders, carloads, minimum weight capacity of car, except as noted. Rates in cents per ton of 2,000 pounds.	FROM Crawford Ill. Hodgkins Ill. McCook Ill.	TO Team tracks of Illinois Central Railroad at Chicago, 26th Street and south, Also Blue Island, Burnside, Grand Crossing, Harvey, Homewood, Kensington, Riverdale, South Chicago, West Pullman, Windsor Park.	✦⑥45 ④⑥70
270-A Cancels 270			TO Team tracks of Illinois Central Railroad at Chicago, north of 26th Street, Also Berwyn, Bridgeport, Broadview, Forest Park, Hawthorne.	✦⑥45 ④⑥70
275-A Cancels 275			TO Tracks serving Stadium Site near 15th Street and Lake Front, Chicago.	✦⑥45 ④⑥70
[D] 280-A Cancels 280	Crushed Stone, carloads, minimum weight 110,000 pounds. Rates in cents per ton of 2,000 pounds. Expires with December 31, 1937.	FROM Quarries of the Consumers Co., Dolese & Shepard, and Riverside Lime and Cement Co., located at or near McCook, Ill.	TO Sewage treatment plant of the Sanitary District of Chicago at 39th Street and 52nd Ave., within the switching district of Chicago, Ill.	①½30

Amends page 8 of tariff.

[I] SECTION 3

Where rates are published in Section 2 the rates named in this Section on the same commodity from and to the same points via the same route will not apply.

COMMODITY RATES
Between Stations on Chicago & Illinois Western R. R.

	IN CENTS PER 100 POUNDS		
ITEM No. ☞	300	305	310
DISTANCES IN MILES	Bran, shipstuff and shorts, in sacks, in lots of 2,000 pounds or over.	Feed, chopped or ground, in sacks, in lots of 2,000 pounds or over.	Flour, in barrels or sacks, in lots of 2,000 pounds or over.

Can. 265			Homewood, Kensington, Riverdale, South Chicago, West Pullman, Windsor Park.	
	Stone, Crushed, Rip Rap, Black Dirt and Cinders, carloads, minimum weight capacity of car, except as noted. **Rates in cents per ton of 2,000 pounds.**	Crawford . . Ill. Hodgkins . . . . Ill. McCook . . . . . Ill.		
270-A Cancels 270			**TO** Team tracks of Illinois Central Railroad at Chicago, north of 26th Street, Also Berwyn, Bridgeport, Broadview, Forest Park, Hawthorne.	✦(3)✦50 ✦(3)70
275-A Cancels 275			**TO** Tracks serving Stadium Site near 15th Street and Lake Front, Chicago.	✦(3)✦50 ✦(3)70
[3] 280-A Cancels 280	**Crushed Stone,** carloads, minimum weight 110,000 pounds. **Rates in cents per ton of 2,000 pounds.** **Expires with December 31, 1937.**	**FROM** Quarries of the Consumers Co., Dolese & Shepard, and Riverside Lime and Cement Co., located at or near McCook, Ill.	**TO** Sewage treatment plant of the Sanitary District of Chicago at 39th Street and 52nd Ave., within the switching district of Chicago, Ill.	(1)(3)30

Amends page 8 of tariff.

[3]**SECTION 3**

Where rates are published in Section 2 the rates named in this Section on the same commodity from and to the same points via the same route will not apply.

COMMODITY RATES

Between Stations on Chicago & Illinois Western R. R.

ITEM No.☞	IN CENTS PER 100 POUNDS		
	300	305	310
DISTANCES IN MILES	**Bran, shipstuff and shorts, in sacks, in lots of 2,000 pounds or over.**	**Feed, chopped or ground, in sacks, in lots of 2,000 pounds or over.**	**Flour, in barrels or sacks, in lots of 2,000 pounds or over.**
Cancel, account no movement.	. . . . .	. . . . .	. . . . .

✦Reduction.

✦Applies only on Illinois intrastate traffic.

(1) Published to meet motor truck competition. Not subject to Agent R. A. Sperry's Tariff of Emergency Charges No. 67-A, I. C. C. No. 311, Ill. C. C. No. 148, supplements thereto or successive issues thereof.

(2) Issued in compliance with order of the Interstate Commerce Commission in Docket 19610, third supplemental report, of June 25, 1935.

(3) Issued in compliance with order of Interstate Commerce Commission in Docket 19610, of July 3, 1933.

(4) Applies only on Crushed Stone, carloads, minimum weight 100,000 pounds, shipped in open top cars not covered by tarpaulins or other protective covering. Published in compliance with amended order of the Interstate Commerce Commission in Docket 19610, of February 2, 1937, and orders of the Illinois Commerce Commission in Dockets 15191, 15539 (and supplemental orders thereto), 15878, 17379 and 17435 of February 11, 1937. Expires with September 30, 1938, unless sooner cancelled, changed or extended.

◂ Does not apply on traffic covered by reference mark ▸.

[3]**Reissued** from Supplement No. 3, effective April 29, 1936.

Supplement No. 11 to
Ill. C. C. No. 21-A
Cancels Supplements Nos. 9 and 10.
Supplements Nos. ⑨8 and 11 contain all changes from original tariff effective on date hereof.

Supplement No. 10 to
I. C. C. No. 125-A
Cancels Supplement No. 9
Supplements Nos. ⑨8 and 10 contain all changes from original tariff effective on date hereof.

CHICAGO & ILLINOIS WESTERN RAILROAD

IN CONNECTION WITH

PARTICIPATING CARRIERS AS SHOWN IN TARIFF

SUPPLEMENT No. 10 TO G. F. D. 520-E
Cancels Supplements Nos. 9 and 9-A.
Supplements Nos. ⑨8 and 10 contain all changes from original tariff effective on date hereof

SUPPLEMENT TO

FREIGHT TARIFF

—OF—

Stamp here date received

5

Local, Joint and Proportional Rates

APPLYING ON

COMMODITIES

Between Stations in State of Illinois

—ALSO—

RULES GOVERNING HANDLING OF

CARLOAD FREIGHT

—AT AND BETWEEN—

Stations on the Chicago & Illinois Western R. R.

—ALSO BETWEEN—

Stations Named Herein

—AND—

Junctions and Connecting Lines and Between Connections

PARTICIPATING CARRIERS AS SHOWN IN TARIFF

SUPPLEMENT No. 10 TO G. F. D. 520-E
Cancels Supplements Nos. 9 and 9-A.
Supplements Nos. ⑧8 and 10 contain all changes from original tariff effective on date hereof

SUPPLEMENT TO

FREIGHT TARIFF

—OF—

Local, Joint and Proportional Rates

APPLYING ON

COMMODITIES

Between Stations in State of Illinois

—ALSO—

RULES GOVERNING HANDLING OF

CARLOAD FREIGHT

—AT AND BETWEEN—

Stations on the Chicago & Illinois Western R. R.

—ALSO BETWEEN—

Stations Named Herein

—AND—

Junctions and Connecting Lines, and Between Connections

Governed (except as otherwise provided herein) by Illinois Freight Classification No. 18, R. A. Sperry's I. C. C. No. 317, Ill. C. C. No. 149, supplements thereto or successive issues thereof.

ISSUED MARCH 15, 1937.

EFFECTIVE APRIL 18, 1937.
(Except as otherwise provided herein.)

⑧ Cancellation Supplement.

Issued by
W. F. EBERHARDT
Traffic Manager
135 East Eleventh Place,
CHICAGO, ILL.

Stamp here date received

5

(2) Amends page 2 of tariff.

LIST OF INDUSTRIES LOCATED ON CHICAGO & ILLINOIS WESTERN R. R.

NAME	LOCATION	NAME	LOCATION
CANCEL:		ADD:	
(c) American Tar Products Co	Crawford, Ill.	Consolidated Co	McCook, Ill.
		Herlihy Mid-Continent Construction Co	Crawford, Ill.
		Koppers Products Co	Crawford, Ill.

RULES AND REGULATIONS

Rule No.	SUBJECT	RULES
(c 85) Cancels 85 of Supplement No. 4 and 85 of Supplement No. 5	Terminal Allowance	(a) On all carload revenue shipments destined to or coming from plant of Chicago By-Products Coke Company, terminal switching is performed by Chicago By-Products Coke Company for account of Chicago & Illinois Western Railroad. Chicago By-Products Coke Company will be allowed for such service out of current rate to or from their plant, actual cost of service performed, as specified in monthly bills submitted to this railroad, on all cars handled between points of interchange with this railroad and first point at which cars are loaded or unloaded, subject to a maximum allowance of $1.85 per car. The above allowance includes handling of empty cars in reverse direction or empty cars handled preparatory to loading. (b) (c) Cancel. Allowances to Commonwealth Edison Company (Crawford Avenue Plant) discontinued. Published in compliance with order of Interstate Commerce Commission in Ex Parte 104, 49th Supplemental Report, of April 1, 1959.
(c 90) Cancels 90 of Tariff	Distance Rates	Cancel. Tariff, as amended, does not contain distance rates. (XX-658-GFD-520.)

SECTION 2

When rates are published in this Section on the commodity transported from point of origin to destination, rates named in this section will apply regardless of rates between the same points published in other sections.

Item No. 206-B cancels 206-A. **PROPORTIONAL RATES**

BETWEEN	AND Connection with connecting lines shown below direct	Junction Points	Commodities	Rates in Cents per 100 Pounds (Except as Noted) A	B
Chicago Ill. Crawford " Hodgkins " McCook " Western Ave "	Alton R. R. Atchison, Topeka & Santa Fe Ry Baltimore & Ohio Chicago Term. R. R. Indiana Harbor Belt R. R.	McCook Ill.	Coal, per ton of 2,000 pounds Crushed Stone Sand and Gravel Ice, per ton of 2,000 pounds Railway Equipment on own wheels, viz.: Empty Freight Cars, each Baggage Cars Ballast Spreaders Caboose Cars Dining Cars Express Cars Mail Cars, Each Passenger Coaches Sleeping Cars Steam Shovels Steam Derricks	38 42 42 25 19 $2 70 $1 80 $9 50 $7 65
	Belt Railway Co Chicago, Burlington & Quincy R. R. Illinois Central R. R. Manufacturers Junction Ry	Crawford Ill.			
(I. C. C. Dkt. 19610)	Chicago Junction Ry Chicago River & Indiana R. R.	Western Ave. Ill.			

No.		
[3'85 Cancels 85 of Supplement No. 4 and 85 of Supplement No. 5	Terminal Allowance	(a) On all carload revenue shipments destined to or coming from plant of Chicago By-Products Coke Company, terminal switching is performed by Chicago By-Products Coke Company for account of Chicago & Illinois Western Railroad. Chicago By-Products Coke Company will be allowed for such service out of current rate to or from their plant, actual cost of service performed, as specified in monthly bills submitted to this railroad, on all cars handled between points of interchange with this railroad and first point at which cars are loaded or unloaded, subject to a maximum allowance of $1.85 per car. The above allowance includes handling of empty cars in reverse direction or empty cars handled preparatory to loading. (b) [4]Cancel. Allowances to Commonwealth Edison Company (Crawford Avenue Plant) discontinued. Published in compliance with order of Interstate Commerce Commission in Ex Parte 104, 49th Supplemental Report, of April 1, 1936.
[1'90 Cancels 90 of Tariff	Distance Rates	Cancel. Tariff, as amended, does not contain distance rates. (XX-658-GFD-520.)

SECTION 2

When rates are published in this Section on the commodity transported from point of origin to destination, rates named in this section will apply regardless of rates between the same points published in other sections.

Item No. 206-B cancels 206-A. **PROPORTIONAL RATES**

BETWEEN	AND Connection with connecting lines shown below direct	Junction Points	Commodities	Rates in Cents per 100 Pounds (Except as Noted) A	B
Chicago Ill. Crawford " Hodgkins " McCook " Western Ave " (I. C. C. Dkt. 19610)	Alton R. R. Atchison, Topeka & Santa Fe Ry. Baltimore & Ohio Chicago Term. R. R. Indiana Harbor Belt R. R.	McCook Ill.	Coal, per ton of 2,000 pounds	38	19
			Crushed Stone Sand and Gravel	42	42
			Ice, per ton of 2,000 pounds	25	19
			Railway Equipment on own wheels, viz.:		
			Empty Freight Cars, each	$2 70	$1 80
			Baggage Cars Ballast Spreaders Caboose Cars Dining Cars Express Cars Mail Cars Passenger Coaches Sleeping Cars Steam Shovels Steam Derricks Snow Plows Locomotives Locomotive Tenders	Each $9 50	$7 65
	Belt Railway Co. Chicago, Burlington & Quincy R. R. Illinois Central R. R. Manufacturers Junction Ry.	Crawford Ill.			
	Chicago Junction Ry. Chicago River & Indiana R. R. Illinois Northern Ry. Pennsylvania Railroad Company	Western Ave Ill.			
	All railroads via Chicago, Ill., when delivery is made direct to that road.		Locomotives and Tenders combined (dead or under steam)	50% of actual weight minimum weight 60,000 pounds (9)2	1¼
			All other Freight	2	1¼

A—When point of origin and destination are within ①Chicago Switching District. ↓Reduction.
B—When point of origin or destination is outside of ①Chicago Switching District.
①Chicago Switching District, definition of, see page 3 of tariff.
②When pilot is necessary an additional charge of $5.00 will be made to cover service of pilot.
④Name of industry changed. New name included in list.
[3]Reissued from Supplement No. 2, effective August 1, 1935.
[4]Reissued from Supplement No. 4, effective May 18, 1936.
[9]Reissued from Supplement No. 9, effective April 1, 1937.

JOINT PROPORTIONAL RATES

[1]Item No. 210-A cancels 210.

Between (except as noted)

Chicago	Ill.	McCook	Ill.
Crawford	Ill.	Western Ave	Ill.
Hodgkins (formerly Gary)	Ill.		

AND

Junction of Intermediate Carriers named in Column Two below with Railroad named in Column One below, such junctions being within Chicago Switching District:

Column One	Column Two	Rates
⑦Alton R. R		
⑦Atchison, Topeka & Santa Fe Ry		
Baltimore & Ohio R. R	B. Rv. of C.; B. & O. C. T. R. R.	
⑦Baltimore & Ohio Chicago Terminal R. R		
⑦Belt Ry. of Chicago		
Chesapeake and Ohio Ry. of Indiana	B. Rv. of C.; B. & O. C. T. R. R.	
Chicago & Calumet River R. R	B. & O. C. T. R. R.	
Chicago & Eastern Illinois R. R	B. Rv. of C.; B. & O. C. T. R. R.	
Chicago & Erie R. R	B. Rv. of C.; B. & O. C. T. R. R.	
Chicago & North Western Ry	B. Rv. of C.; B. & O. C. T. R. R.; I. N. Rv.	
Chicago & Western Indiana R. R	B. Rv. of C.	
Chicago, Aurora & Elgin R. R	B. & O. C. T. R. R.	
⑦Chicago, Burlington & Quincy R. R		
Chicago Great Western R. R	B. Rv. of C.; B. & O. C. T. R. R.	⑨All Freight, when point of origin and destination are within ①Chicago Switching District, 2 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago, Indianapolis & Louisville Ry	B. Rv. of C.; B. & O. C. T. R. R.	
Chicago, Indiana Southern R. R	B. Rv. of C.	
⑦Chicago Junction Ry		
Chicago, Milwaukee, St. Paul & Pacific R. R.	B. Rv. of C.; I. N. Rv.	
C. M. St. P. & P. R. R. (Terre Haute Division)	B. & O. C. T. R. R.	
⑦Chicago River & Indiana R. R		
Chicago Rock Island & Pacific Ry	B. Rv. of C.; B. & O. C. T. R. R.	⑨All Freight, when point of origin (or destination is outside ①Chicago Switching District, 2 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago Short Line Ry	B. Rv. of C.; B. & O. C. T. R. R.	
Chicago, South Shore & South Bend R. R	B. Rv. of C.; B. & O. C. T. R. R.	
Chicago, West Pullman & Southern Rv	B. Rv. of C.	
Cleveland, Cincinnati, Chicago & St. Louis Ry	B. Rv. of C.; I. N. Rv.	
Elgin, Joliet & Eastern Ry. (see Note 2 below)	B. Rv. of C.; B. & O. C. T. R. R.	
Erie R. R	B. Rv. of C.; B. & O. C. T. R. R.	
Grand Trunk Rv	B. Rv. of C.; B. & O. C. T. R. R.; I. N. Rv.	
⑦Illinois Central R. R		
⑦Illinois Northern Ry		
⑦Indiana Harbor Belt R. R		
⑦Manufacturers Junction Ry		
Michigan Central R. R	B. Rv. of C.	
Minneapolis, St. Paul & Sault Ste. Marie Ry	B. Rv. of C.; B. & O. C. T. R. R.; I. N. Rv.	
New York Central R. R	B. Rv. of C.; B. & O. C. T. R. R.	
New York, Chicago & St. Louis R. R	B. Rv. of C.; B. & O. C. T. R. R.	
⑦Pennsylvania R. R		
Pere Marquette R. R	B. Rv. of C.; B. & O. C. T. R. R.	
Pullman R. R	B. Rv. of C.	
Wabash Rv	B. Rv. of C.; B. & O. C. T. R. R.	

⑦Alton R. R.		
⑦Atchison, Topeka & Santa Fe Ry		
Baltimore & Ohio R. R	B. Ry. of C.; B. & O. C. T. R. R.	
⑦Baltimore & Ohio Chicago Terminal R. R		
③Belt Ry. of Chicago		
Chesapeake and Ohio Ry. of Indiana	B. Ry. of C.; B. & O. C. T. R. R	
Chicago & Calumet River R. R	B. & O. C. T. R. R	
Chicago & Eastern Illinois R. R	B. Ry. of C.; B. & O. C. T. R. R	
Chicago & Erie R. R	B. Ry. of C.; B. & O. C. T. R. R	
Chicago & North Western Ry	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry	
Chicago & Western Indiana R. R	B. Ry. of C.	
Chicago, Aurora & Elgin R. R	B. & O. C. T. R. R	
⑦Chicago, Burlington & Quincy R. R		
Chicago Great Western R. R.	B. Ry. of C.; B. & O. C. T. R. R	
Chicago, Indianapolis & Louisville Ry	B. Ry. of C.; B. & O. C. T. R. R.	③All Freight, when point of origin and destination are within ①Chicago Switching District, 2 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago, Indiana Southern R. R	B. Ry. of C.	
⑦Chicago Junction Ry		
Chicago, Milwaukee, St. Paul & Pacific R. R.	B. Ry. of C.; I. N. Ry	
C. M. St. P. & P. R. R. (Terre Haute Division)	B. & O. C. T. R. R	
⑦Chicago River & Indiana R. R		
Chicago, Rock Island & Pacific Ry	B. Ry. of C.; B. & O. C. T. R. R	③All Freight, when point of origin or destination is outside ①Chicago Switching District, 2 cents per 100 pounds, minimum weight 60,000 pounds.
Chicago Short Line Ry	B. Ry. of C.; B. & O. C. T. R. R	
Chicago, South Shore & South Bend R. R	B. Ry. of C.; B. & O. C. T. R. R	
Chicago, West Pullman & Southern Ry	B. Ry. of C.	
Cleveland, Cincinnati, Chicago & St. Louis Ry	B. Ry. of C.; I. N. Ry	
Elgin, Joliet & Eastern Ry. (see Note 2 below)	B. Ry. of C.; B. & O. C. T. R. R.	
Erie R. R	B. Ry. of C.; B. & O. C. T. R. R	
Grand Trunk Ry	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry	
⑦Illinois Central R. R		
⑦Illinois Northern Ry		
⑦Indiana Harbor Belt R. R		
⑦Manufacturers Junction Ry		
Michigan Central R. R	B. Ry. of C.	
Minneapolis, St. Paul & Sault Ste. Marie Ry	B. Ry. of C.; B. & O. C. T. R. R.; I. N. Ry	
New York Central R. R	B. Ry. of C.; B. & O. C. T. R. R	
New York, Chicago & St. Louis R. R	B. Ry. of C.; B. & O. C. T. R. R	
⑦Pennsylvania R. R		
Pere Marquette R. R	B. Ry. of C.; B. & O. C. T. R. R	
Pullman R. R	B. Ry. of C.	
Wabash Ry	B. Ry. of C.; B. & O. C. T. R. R	

①Chicago Switching District, definition of, see page 3 of tariff.

②Exceptions. Railway Equipment on own wheels, viz.:

Baggage Cars. Freight Cars. Sleeping Cars.
Dining Cars. Locomotives or Tenders. Tank Cars.
Express or Mail Cars. Passenger Coaches.

For rates on these commodities, see tariffs of Individual Carriers lawfully on file with Interstate Commerce Commission (on Interstate traffic) and with various State Commissions (on Intra-state traffic).

* Issued in compliance with order of Interstate Commerce Commission in Docket No. 19510, of July 3, 1933.

† Cancel account direct connection with C. & I. W. R. R. For rates to apply, see Item 205-A.

Note 2. Rates in connection with Elgin, Joliet & Eastern Ry. apply to but not from points on that line.

‡ Reissued from Supplement No. 2, effective August 12, 1935.

SECTION 2
MISCELLANEOUS COMMODITY RATES
In Cents per 100 Pounds Unless Otherwise Specified

Item No.	APPLYING ON	BETWEEN (Except as noted)	AND (Except as noted)	RATES
		FROM	TO	
(D) 265-A Cancels 265	Stone, Crushed, Rip Rap, Black Dirt and Cinders, carloads, minimum weight capacity of car, except as noted. Rates in cents per ton of 2,000 pounds.	Crawford ..... Ill. Hodgkins ..... Ill. McCook ..... Ill.	Team tracks of Illinois Central Railroad at Chicago, 26th Street and south, Also Blue Island, Burnside, Grand Crossing, Harvey, Homewood, Kensington, Riverdale, South Chicago, West Pullman, Windsor Park.	+(D)50 (D)70
(D) 270-A Cancels 270			TO Team tracks of Illinois Central Railroad at Chicago, north of 26th Street, Also Berwyn, Bridgeport, Broadview, Forest Park, Hawthorne.	+(D)50 (D)70
(D) 275-A Cancels 275			TO Tracks serving Stadium Site near 15th Street and Lake Front, Chicago.	+(D)50 (D)70
(D) 280-A Cancels 280	Crushed Stone, carloads, minimum weight 110,000 pounds. Rates in cents per ton of 2,000 pounds. Expires with December 31, 1937.	FROM Quarries of the Consumers Co., Dolese & Shepard, and Riverside Lime and Cement Co., located at or near McCook, Ill.	TO Sewage treatment plant of the Sanitary District of Chicago at 39th Street and 52nd Ave., within the switching district of Chicago, Ill.	(1)(J)30
+(10) 285	Crushed Stone, carloads, minimum weight 100,000 pounds, shipped in open top cars not covered by tarpaulins or other protective covering. Rates in cents per ton of 2,000 pounds.	Industries, Side Tracks on Chicago & Illinois Western R. R. and connections with other railroads.	Industries, Side Tracks on Chicago & Illinois Western R. R. and connections with other railroads.	(J)(J)40

Amends page 6 of tariff.

(J)SECTION 3

Where rates are published in Section 2 the rates named in this Section on the same commodity from and to the same points via the same route will not apply.

COMMODITY RATES
Between Stations on Chicago & Illinois Western R. R.

ITEM No. / DISTANCES IN MILES	IN CENTS PER 100 POUNDS		
	300	305	310
	Bran, shipstuff and shorts, in sacks, in lots of 2,000 pounds or over.	Feed, chopped or ground, in sacks, in lots of 2,000 pounds or over.	Flour, in barrels or sacks, in lots of 2,000 pounds or over.
Cancel, account no movement.	.....	.....	.....

+Applies only on Illinois intrastate traffic.

(1)Published to meet motor truck competition. Not subject to Agent R. A. Sperry's Tariff of Emergency Charges No. 67-A, I. C. C. No. 311, Ill. C. C. No. 148 supplements thereto or successive issues thereof.

Cancels 265			Burnside, Grand Crossing, Harvey, Homewood, Kensington, Riverdale, South Chicago, West Pullman, Windsor Park.	✦⑥50 ④⑥70
	Stone, Crushed, Rip Rap, Black Dirt and Cinders, carloads, minimum weight capacity of car, except as noted. Rates in cents per ton of 2,000 pounds.	Crawford ..... Ill. Hodgkins ..... Ill. McCook ..... Ill.	TO	
⑨ 270-A Cancels 270			Team tracks of Illinois Central Railroad at Chicago, north of 26th Street, Also Berwyn, Bridgeport, Broadview, Forest Park, Hawthorne.	✦⑥50 ④⑥70
⑨ 275-A Cancels 275			TO Tracks serving Stadium Site near 15th Street and Lake Front, Chicago.	✦⑥50 ④⑥70
⑨ 280-A Cancels 280	Crushed Stone, carloads, minimum weight 110,000 pounds. Rates in cents per ton of 2,000 pounds. Expires with December 31, 1937.	FROM Quarries of the Consumers Co., Dolese & Shepard, and Riverside Lime and Cement Co., located at or near McCook, Ill.	TO Sewage treatment plant of the Sanitary District of Chicago at 39th Street and 52nd Ave., within the switching district of Chicago, Ill.	①③30
✦⑯ 285	Crushed Stone, carloads, minimum weight 100,000 pounds, shipped in open top cars not covered by tarpaulins or other protective covering. Rates in cents per ton of 2,000 pounds.	Industries, Side Tracks on Chicago & Illinois Western R. R. and connections with other railroads.	Industries, Side Tracks on Chicago & Illinois Western R. R. and connections with other railroads.	⑦⑧40

Amends page 8 of tariff.

⑨SECTION 3

Where rates are published in Section 2 the rates named in this Section on the same commodity from and to the same points via the same route will not apply.

COMMODITY RATES

Between Stations on Chicago & Illinois Western R. R.

ITEM No.	IN CENTS PER 100 POUNDS		
DISTANCES IN MILES	300	305	310
	Bran, shipstuff and shorts, in sacks, in lots of 2,000 pounds or over.	Feed, chopped or ground, in sacks, in lots of 2,000 pounds or over.	Flour, in barrels or sacks, in lots of 2,000 pounds or over.
Cancel, account no movement.	.....	.....	.....

✦Applies only on Illinois intrastate traffic.

①Published to meet motor truck competition. Not subject to Agent R. A. Sperry's Tariff of Emergency Charges No. 67-A, I. C. C. No. 311, Ill. C. C. No. 148, supplements thereto or successive issues thereof.

③Issued in compliance with order of the Interstate Commerce Commission in Docket 19610, third supplemental report, of June 25, 1935.

④Issued in compliance with order of Interstate Commerce Commission in Docket 19610[1], of July 3, 1933.

⑥Applies only on Crushed Stone, carloads, minimum weight 100,000 pounds, shipped in open top cars not covered by tarpaulins or other protective covering. Published in compliance with amended order of the Interstate Commerce Commission in Docket 19610, of February 2, 1937, and orders of the Illinois Commerce Commission in Dockets 15191, 15539 (and supplemental orders thereto), 15878, 17179 and 17335 of February 11, 1937. Expires with September 30, 1938, unless sooner cancelled, changed or extended.

⑦Does not apply on traffic covered by reference mark ⑤.

⑧Published in compliance with amended order of Interstate Commerce Commission in Docket 19610 of February 2, 1937, and orders of the Illinois Commerce Commission in Dockets 15191, 15539 (and supplemental orders thereto), 15878, 17179 and 17335 of February 11, 1937. Expires with September 30, 1938, unless sooner cancelled, changed or extended.

⑨Applies only when entire movement is within Chicago switching district as described in Agent R. A. Sperry's Tariff No. 20-U, Ill. C. C. No. 161.

⑯Reissued from Supplement No. 10 to Ill. C. C. No. 11-A, effective April 1, 1937.

⑤Reissued from Supplement No. 3, effective April 29, 1936.

⑨Reissued from Supplement No. 9, effective April 1, 1937.

[fols. 369-371] In United States District Court

Equity. No. 15335

[Title omitted]

Order Denying Motion to Modify Decree—Filed June 13, 1938

Before Sparks, Circuit Judge, and Wilkerson and Lindley, District Judges

Motion of plaintiff for oral argument on motion to modify final decree denied. Motion of plaintiff to modify final decree denied.

13 June, 1938.

[fol. 372] In United States District Court

In Equity. No. 15335

[Title omitted]

Petition for Appeal—Filed June 24, 1938

Chicago By-Product Coke Company, plaintiff in the above entitled cause, feeling itself aggrieved by the final decree entered in said cause by this Court on the 27th day of April, 1938, and by the order entered the 13th day of June, 1938, denying the motion of plaintiff for modification of said final decree, prays an appeal from said decree and order to the Supreme Court of the United States.

The particulars wherein said plaintiff considers the decree and order erroneous are set forth in the assignment of errors accompanying this petition and to which reference is hereby made.

Said plaintiff prays that a transcript of record, proceedings and papers on which said decree and order were made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated: June 22, 1938.

Nuel D. Belnap, John S. Burchmore, Solicitors for Chicago By-Product Coke Company, Plaintiff.

[fol. 373] IN UNITED STATES DISTRICT COURT

In Equity. No. 15335

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 24, 1938

Chicago By-Product Coke Company, palintiff in the above entitled cause, now comes and files the following assignment of errors in connection with its petition for an appeal from the final decree entered by this Court on the 27th day of April, 1938, in said cause and from the further order entered June 13, 1938, denying the motion of plaintiff to modify said final decree:

The District Court erred:

1. In ordering in its final decree that all sums, which pursuant to the terms of the allowance tariffs of the carrier defendants herein would have been payable to the plaintiff since the date of an order of interlocutory injunction entered by the Court on August 28, 1938, and which sums have been pursuant to the last paragraph of said interlocutory injunction set up by said carriers on their books of account, subject to the further order of this Court, shall be retained by said carriers as a part of their general funds and said accounts canceled.

2. In failing and refusing to authorize and direct the carrier defendants herein to pay over to the plaintiff all sums which, pursuant to the terms of the published tariffs of the carrier defendants, have become due and owing to the plaintiff since the date of the said interlocutory injunction.

[fols. 374-376] 3. In entering the order of June 13, 1938, denying the motion of plaintiff to modify the final decree (a) by striking therefrom that portion of paragraph 1 of said decree which reads as follows: "and that all sums, which pursuant to the terms of the allowance tariffs of the carrier defendants herein would have been payable to the plaintiff since the date of said interlocutory injunction and which sums have been pursuant to the last paragraph of said interlocutory injunction set up by said carriers on their books of account, subject to the further order of this Court, shall be retained by said carriers as a part of their general funds and said accounts canceled," and (b) by entering its

further order directing the defendants, The Belt Railway Company of Chicago, Chicago & Illinois Western Railroad, and Illinois Central Railroad Company, to account for and pay over to plaintiff all sums which have become payable pursuant to the allowance tariffs.

4. In that the final decree in substance and result sets aside and nullifies the provisions of tariffs voluntarily published by the defendant carriers and filed with the Interstate Commerce Commission, in accordance with Section 6 of the Interstate Commerce Act.

5. In that the final decree in substance and result makes effective on December 2, 1936, an order of defendant Interstate Commerce Commission although the effective date of said order was postponed to June 15, 1937, by further order of said Commission.

6. In that the decree, in authorizing and directing the carrier defendants to withhold payments to plaintiff, was not supported by any evidence or by findings of fact or conclusions of law by the Court, as required by Equity Rule 70½.

Nuel D. Belnap, John S. Burchmore, Solicitors for Plaintiff.

[fols. 377-383] In United States District Court

In Equity. No. 15335

[Title omitted]

Order Allowing Appeal—June 24, 1938

Plaintiff, having filed its petition for appeal herein, same is hereby granted and the plaintiff is hereby allowed to appeal said case, and

It is Ordered, that said appeal be, and the same is hereby, entered to the Supreme Court of the United States upon the filing of a bond by the said plaintiff in the sum of Five Hundred Dollars, with good and sufficient surety to be approved by this Court, conditioned upon said plaintiff prosecuting its appeal to effect, and answering all costs if it fail to make its appeal good.

Dated this 24th day of June, 1938.

James H. Wilkerson, United States District Judge.

[fol. 384] IN UNITED STATES DISTRICT COURT

In Equity. No. 15335

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed July 19, 1938

To the Clerk of the Above-Entitled Court:

Please prepare a Transcript of the Record in the above entitled cause in the matter of the appeal therein and include in said Transcript in the order given below the following matter, viz:

1. Plaintiff's petition or bill of complaint, filed September 2, 1936.

2. Chancery subpoena to the Belt Railway Company of Chicago, Chicago & Illinois Western Railroad and Illinois Central Railroad Company, with return of service thereon, filed September 16, 1936.

3. Answer of Interstate Commerce Commission, filed September 16, 1936.

4. Answer of United States, filed September 17, 1936.

5. Appearance of Belt Railway Company of Chicago, filed September 21, 1936.

6. Order of Interlocutory Injunction, entered December 2, 1936.

7. Stipulation re consolidation of cases, filed December 2, 1936.

8. Notice of motion to set case for hearing, filed March 2, 1938.

9. Orders of the Interstate Commerce Commission, dated June 30, 1936, September 10, 1936 and February 26, 1937, in Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, received in evidence at the final hearing before the Court on April 18, 1938.

[fols. 385-388] 10. Findings of fact and conclusions of law by the Court, entered April 27, 1938.

11. Final decree, entered April 27, 1938.

12. Notice of motion, filed May 25, 1938.

13. Motion of plaintiff to modify final decree, with appendices thereto, filed May 25, 1938.

14. Memorandum of order entered by the Court, June 13, 1938, denying motion of plaintiff for oral argument on mo-

tion to modify final decree and denying plaintiff's motion to modify final decree.

15. Plaintiff's petition for appeal.
16. Plaintiff's assignment of errors.
17. Plaintiff's statement as to jurisdiction on appeal.
18. Order allowing appeal.
19. Notice of appeal.
20. Notice pursuant to paragraph 2 of Rule 12.
21. Notice to Attorney General of Illinois.
22. Original citation on appeal.
23. All acknowledgments and admissions of service.
24. This praecipe for transcript of record.
25. Clerk's certificate.

Dated July 19, 1938.

Nuel D. Belnap, John S. Burchmore, Solicitors for Chicago By-Product Coke Company.

Appellees, by their counsel, consent to the preparation and transmittal of the record in accordance with the foregoing praecipe and waive their right to file a counter-praecipe.

Elmer B. Collins, for the Attorney General; Edward M. Reidy, for Interstate Commerce Commission, by Earle C. Hurley, Assistant United States Attorney. J. R. Barse and Samuel Kassel, Attorney-for The Belt Railway Company of Chicago.

[fols. 389-391] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 392] IN SUPREME COURT OF THE UNITED STATES

No. 227

INLAND STEEL COMPANY, a Corporation, Appellant,

v.

UNITED STATES OF AMERICA, INDIANA HARBOR BELT RAILROAD COMPANY, INTERSTATE COMMERCE COMMISSION, Appellees

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE RECORD TO BE PRINTED—Filed Aug. 5, 1938

I

Inland Steel Company, appellant, will rely upon the following points in brief and oral argument before this Court on its appeal in the above entitled cause:

The District Court erred:

1. In ordering in its final decree that all sums, which pursuant to the terms of the allowance tariffs of the carrier defendant (appellee) herein would have been payable to the plaintiff (appellant) since the date of an order of interlocutory injunction entered by that Court on August 28, 1935, and which sums have been pursuant to the last paragraph of said interlocutory injunction set up by said carrier on its books of account, subject to the further order of said Court, shall be retained by said carrier as a part of its general funds and said account cancel-ed.

2. In failing and refusing to authorize and direct the carrier appellee herein to pay over to the appellant all sums which, pursuant to the terms of the published tariffs of the carrier appellee, have become due and owing to the appellant since the date of the said interlocutory injunction.

3. In entering the order of June 15, 1938, denying the motion of appellant to modify the final decree (a) by striking therefrom that portion of paragraph 1 of said decree which reads as follows: "and that all sums, which pursuant to the [fol. 393] terms of the allowance tariffs of the carrier defendant herein would have been payable to the plaintiff since the date of said interlocutory injunction and which sums have been pursuant to the last paragraph of said inter-

locutory injunction set up by said carrier on its books of account, subject to the further order of this Court, shall be retained by said carrier as a part of its general funds and said account canceled," and (b) by entering its further order directing the appellee, Indiana Harbor Belt Railroad Company, to account for and pay over to appellant all sums which have become payable pursuant to the allowance tariff.

4. In that the final decree in substance and result sets aside and nullifies the provisions of a tariff voluntarily published by the appellee carrier and filed with the Interstate Commerce Commission, in accordance with Section 6 of the Interstate Commerce Act.

5. In that the final decree in substance and result makes effective on September 3, 1935, an order of appellee Interstate Commerce Commission, although the effective date of said order was postponed to June 15, 1937, by further order of said Commission.

6. In that the decree, in authorizing and directing the carrier appellee to withhold payments to appellant, was not supported by any evidence or by findings of fact or conclusions of law by the Court, required by Equity Rule 70½.

II

Appellant further states that the entire record in this cause as filed in this Court is necessary for consideration of the foregoing points and that the entire transcript of record as transmitted by the Clerk of the District Court should be printed by the Clerk of this Court, excepting the following documents which shall be omitted from printing:

1. Stipulation re consolidation of cases, filed December 2, 1936.
2. Notice of motion to set cases for hearing, filed March 1, 1938.
[fol. 394] 3. Notice of motion filed May 25, 1938.
4. Notice of Appeal.
5. Notice pursuant to paragraph 2 of Rule 12.
6. Notice to Attorney General of Illinois.
7. Original Citation on Appeal.
8. Bond on Appeal.

With the above exceptions the entire record on file shall be printed in the customary manner.

Appellant respectfully suggests that the record in this case shall be printed under one cover with the record in No. 228, Chicago By-Product Coke Company, Appellant, v. United States of America, et al., as a consolidated transcript of record.

Luther M. Walter, Nuel D. Belnap, John S. Burchmore, Solicitors for Inland Steel Company.

[fols. 395-396] Acknowledgment of Service

Service of a copy of the above and foregoing appellant's statement of points to be relied upon and designation of the record to be printed, is acknowledged in behalf of all appellees this 5th day of August, 1938.

Elmer B. Collins, for the Attorney General. Daniel W. Knowlton, for Interstate Commerce Commission. Leo P. Day, for Indiana Harbor Belt Railroad Company.

[fol. 397] [File endorsement omitted.]

[fol. 398] In Supreme Court of the United States

No. 228

Chicago By-Product Coke Company, a Corporation, Appellant,

v.

United States of America, Interstate Commerce Commission, The Belt Railway Company of Chicago, Chicago & Illinois Western Railroad, Illinois Central Railroad Company, Appellees

Statement of Points to be Relied upon and Designation of the Record to be Printed—Filed August 5, 1938

I

Chicago By-Product Coke Company, appellant, will rely upon the following points in brief and oral argument before this Court on its appeal in the above-entitled cause:

The District Court erred:

1. In ordering in its final decree that all sums, which pursuant to the terms of the allowance tariffs of the carrier

defendants (appellees) herein, would have been payable to the plaintiff (appellant) since the date of an order of interlocutory injunction entered by said Court on December 2, 1936, and which sums have been pursuant to the last paragraph of said interlocutory injunction set up be said carriers on their books of account, subject to the further order of said Court, shall be retained by said carriers as a part of their general funds and said accounts canceled.

2. In failing and refusing to authorize and direct the carrier appellees herein to pay over to the appellant all sums which, pursuant to the terms of the published tariffs of said carriers, have become due and owing to the appellant since the date of the said interlocutory injunction.

3. In entering the order of June 13, 1938, denying the motion of appellant to modify the final decree (a) by strik-
[fol. 399] ing therefrom that portion of paragraph 1 of said decree which reads as follows: "and that all sums, which pursuant to the terms of the allowance tariffs of the carrier defendants herein would have been payable to the plaintiff since the date of said interlocutory injunction and which sums have been pursuant to the last paragraph of said interlocutory injunction set up by said carriers on their books of account, subject to the further order of this Court, shall be retained by said carriers as a part of their general funds and said accounts canceled," and (b) by entering its further order directing the appellees, The Belt Railway Company of Chicago, Chicago & Illinois Western Railroad, and Illinois Central Railroad Company, to account for and pay over to appellant all sums which have become payable pursuant to the allowance tariffs.

4. In that the final decree in substance and result sets aside and nullifies the provisions of tariffs voluntarily published by the carriers and filed with the Interstate Commerce Commission, in accordance with Section 6 of the Interstate Commerce Act.

5. In that the final decree in substance and result makes effective on December 2, 1936, an order of the Interstate Commerce Commission although the effective date of said order was postponed to June 15, 1937, by further order of said Commission.

6. In that the decree, in authorizing and directing the carrier appellees to withhold payments to appellant, was not supported by any evidence or by findings of fact or conclusions of law by the Court, as required by Equity Rule 70½.

II

Appellant further states that the entire record in this cause as filed in this Court is necessary for consideration of the foregoing points and that the entire transcript of record as transmitted by the Clerk of the District Court should be printed by the Clerk of this Court, excepting the following documents which shall be omitted from printing:

1. Stipulation re consolidation of cases, filed December 2, 1936.
2. Notice of motion to set cases for hearing, filed March 1, 1938.
3. Notice of motion filed May 25, 1938.
4. Notice of appeal.

[fol. 400] 5. Notice pursuant to paragraph 2 of Rule 12.

6. Notice to Attorney General of Illinois.
7. Original Citation on Appeal.
8. Bond on Appeal.

With the above exceptions the entire record on file shall be printed in the customary manner.

III

Appellant respectfully suggests that it may serve the convenience of the Court and will save printing expense if the record in this case may be printed under one cover with the record in No. 227, Inland Steel Company, Appellant, v. United States of America, et al., as a consolidated transcript of record. This was done, under somewhat similar circumstances, in Nos. 514 and 530, at the October term, 1937, United States v. Pan American Petroleum Corporation, et al., and United States v. Humble Oil & Refining Company, et al.

If the two records are reproduced as one printed transcript of record, the following further portions of the record in this case No. 228, will not need to be printed, as being duplications of the record to be printed in No. 227:

Appendix A to plaintiff's petition or bill of complaint, comprising pages 71 to 89 of said printed petition; (Appendix B to said petition to be printed.)

Findings of fact and conclusions of law by the Court, entered April 27, 1938.

Luther M. Walter, Nuel D. Belnap, John S. Burchmore, Solicitors for Chicago By-Product Coke Company.

Acknowledgment of Service

Service of a copy of the above and foregoing appellant's statement of points to be relied upon and designation of the [fols. 401-402] record to be printed, is acknowledged in behalf of appellees this 5th day of August, 1938.

Elmer B. Collins, for the Attorney General. Daniel W. Knoulton, for Interstate Commerce Commission. J. R. Barse, for The Belt Railway Company of Chicago. Elmer A. Smith, for Illinois Central Railroad Company and Chicago & Illinois Western Railroad.

[fol. 403] [File endorsement omitted.]

Endorsed on covers: File No. 42,712. N. Illinois, D. C. U. S. Term No. 227. Inland Steel Company, appellant, vs. The United States of America, Interstate Commerce Commission and Indiana Harbor Belt Railroad Company. Filed July 28, 1938. Term No. 227, O. T., 1938. File No. 42,713. N. Illinois, D. C. U. S., Term No. 228. Chicago By-Product Coke Company, appellant, vs. The United States of America, Interstate Commerce Commission, The Belt Railway Company of Chicago, et al. Filed July 28, 1938. Term No. 228, O. T., 1938.